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On subway graffiti in New York

NATHAN GLAZER

For six years or so one of the more astonishing sights of New York has been the graffiti on the subway trains. The word "graffiti" scarcely suggests, to those who have not seen them, the enormous graphics which decorate the sides of subway cars—murals which march relentlessly over doors and windows, and which may incorporate successive cars to provide the graffiti maker a larger surface on which to paint. They are multicolored, and very difficult to read, but they all, in one way or another, simply represent names. There are no "messages"—no words aside from names, or rather simplified and reduced names, nicknames, or indeed professional names, often with a number attached. (One will not see an Alfredo, Norman, or Patrick, but Taki 137, Kid 56, Nean.) There are no political messages or references to sex—the two chief topics of traditional graffiti. Nor are there any personal messages, or cries of distress, or offers of aid. There are just large billboard-type presentations of the names of the graffiti-makers, in an elaborate script which, with its typical balloon shapes, covers as much surface as possible.

If that were all, then the view that this is art-as-personal-expression, that graffiti are controlled productions reflecting a canon of aesthetic criteria that is beyond middle-class understanding or ap-

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preciation, and to be welcomed and savored rather than suppressed, might make sense. Alas, there is more. The insides of the cars are also marked-up—generally with letters or shapes or scrawls like letters, made with thick black markers, and repeated everywhere there is space for the marks to be made, and many places where there is not. Thus the maps and signs inside the car are obscured, and the windows are also obscured so that passengers cannot see what station they have arrived at. The subway rider—whose blank demeanor, expressing an effort simply to pass through and survive what may be the shabbiest, noisiest, and generally most unpleasant mass-transportation experience in the developed world, has often been remarked upon—now has to suffer the knowledge that his subway car has recently seen the passage through it of the graffiti "artists" (as they call themselves and have come to be called by those, including the police, who know them best). He is assaulted continuously, not only by the evidence that every subway car has been vandalized, but by the inescapable knowledge that the environment he must endure for an hour or more a day is uncontrolled and uncontrollable, and that anyone can invade it to do whatever damage and mischief the mind suggests.

I have not interviewed the subway riders; but I am one myself, and while I do not find myself consciously making the connection between the graffiti-makers and the criminals who occasionally rob, rape, assault, and murder passengers, the sense that all are part of one world of uncontrollable predators seems inescapable. Even if the graffitists are the least dangerous of these, their ever-present markings serve to persuade the passenger that, indeed, the subway is a dangerous place—a mode of transportation to be used only when one has no alternative.

Of course the *sense* of a dangerous place is different from the *reality* of a dangerous place. The thoughtful head of the transit police, Sanford Garelik, will point out—and has statistics to prove—that the subway is less dangerous than the streets. It is well-patrolled, and the occasional sensational crime is no index to the everyday experience of the passenger. Yet the cars in which persons unknown to the passengers have at their leisure marked-up interiors, and obscured maps, informational signs, and windows, serve as a permanent reminder to the passenger that the authorities are incapable of controlling doers of mischief. One can see earlier graffiti underneath a fresh coat of paint that itself is beginning to be covered by new graffiti that mock, as it were, the hapless effort to obscure their predecessors. Thus the signs of official failure are everywhere. And

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the mind goes on, and makes a link between the graffiti and the broken signs—behind broken glass—that are supposed to tell passengers where the train is going, the damaged doors that only open halfway, and the other visible signs of damage in so many cars.

The graffiti artists, who have been celebrated by Norman Mailer and others, are to the subway rider, I would hazard, part of the story of "crime in the subway," which contributes to the decline of subway ridership, which in turn of course contributes to increasing the danger because of the paucity of passengers. (Official signs in stations warn passengers that between 8 P.M. and 4 A.M. they should congregate in the front cars of the trains, to give what protection numbers may provide against the marauders whose presence must always be assumed.) If this linkage is a common one, then the issue of controlling graffiti is not only one of protecting public property, reducing the damage of defacement, and maintaining the maps and signs the subway rider must depend on, but it is also one of reducing the ever-present sense of fear, of making the subway appear a less dangerous and unpleasant place to the possible user. And so one asks: Why can't graffiti be controlled?

A litany of proposals

Interestingly enough, as Chief Garelik points out, this is one crime whose perpetrator is known by the mere fact of the crime itself. The graffiti artist leaves his mark, his name, or a variant of it. Most of these names and marks are known to the police. Chief Garelik will show the visitor an astonishing "mug book," consisting of color photographs of the work of each graffitist, accompanied by a name and address. Almost every graffiti artist becomes known. Indeed, the police have invited graffiti artists up to police headquarters and engaged in "bull sessions" with them to try to figure out the best course of action. Nor is the number of graffiti artists so great—from one perspective—as to present too diffuse a target for police action. There are, at any given time, only 500 or so. They begin at about age 11, the mean age is 14, and they begin to graduate from graffiti after age 16—by then it is presumably "kid stuff." Or perhaps penalties rise as graffitists stop being considered juveniles. Young ones begin by marking the inside of cars, and later advance to the grand murals. There are aesthetic traditions. There are also rules, more or less observed, such as: One does not paint on another's graffiti.

Commonly, paints are stolen. The number of spray-paint cans

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required to embellish the side of a subway car is prodigious and it is hardly likely that young teenagers would have the money. In any case, the police assure the visitor that most paint is stolen. Moreover, Chief Garelik emphasizes—against the chic position that graffiti are art and fun—that the graffiti artists do graduate to more serious crime. The police studied the careers of 15-year-old graffiti artists apprehended in 1974: Three years later, 40 percent had been arrested for more serious crimes—burglary and robbery. Graffiti may be self-expression, but they are not only self-expression. For almost half the graffiti artists there is evidence that graffiti-making is part of an ordinary criminal career.

But if the police know most of them, and there are only 500, then why can't graffiti be controlled? One can go through the litany of proposals—only to end up baffled.

The first suggestion: Arrest them, punish them, make them clean up the graffiti. Indeed, for a while the police were arresting them (or giving out summonses) in very substantial numbers. There were 1,674 arrests in 1973; 1,658 in 1974; 1,208 in 1975; 853 in 1976; 414 in 1977; and 259 in the first half of 1978. As one can see, the arrests dropped radically after 1975, but not because graffiti artists could not be caught—rather because the effort seemed futile. The police began to concentrate on the more determined graffitists and to uncover more serious crimes with which to charge them. For after all, what could one do after arrest that could deter graffitists from going back to graffiti? Put them in juvenile-detention centers? What judge would do that when there were young muggers, assaulters, and rapists to be dealt with, who were far more menacing to their fellow-citizens—and who themselves could not be accommodated in the various overcrowded institutions for juveniles?

But even if juvenile graffitists were not punished by detention, could they not be required to clean-up graffiti? This was popular with some judges for a while, but it turned out that it was expensive to provide guidance and supervision (the cleaning usually had to be done on weekends, requiring overtime payment for those who taught and supervised the work), and the police believe that its main effect was to teach the graffitists the technical knowledge necessary to produce graffiti that effectively resist removal.

Could one, so to speak, "harden the target" by securing the yards in which the cars are stored, and where, as is evident from observing the graffiti, much of the work is done? (The large murals extend below the surface of the subway platform, and clearly must be done while the cars stand on sidings and the whole surface is ac-

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cessible.) Chief Garelik points out that there are 6,000 cars, that one car-yard alone is 600 acres in extent, that many cars cannot be accommodated in the yards and stand in middle tracks, that there are 150 miles of lay-up track, and finally, that wire fences can be cut.

Is there a "technological fix"—a surface that resists graffiti and from which it can be easily washed off? Perhaps, but so far nothing has worked, though certainly the shiny surfaces of new cars put into service make it somewhat harder to apply dense graffiti to them. In time, however, the new surfacing wears off and will take paint. The more serious problem here is the fact that once graffiti gets on a car, it must be taken off immediately so as not to encourage other graffitists. This is the practice in Boston where, as in other cities, the mass-transit system does not have graffiti. But the New York system, so much huger, does not have enough maintenance men, and so the policy of immediately eliminating graffiti cannot be implemented.

One could give graffiti artists summer jobs, as a way of providing them with something else to do, and indeed the police have been instrumental in finding summer jobs for 175 of the young people involved. Well, it is worth a try. But one wonders whether most jobs available for unskilled youths would match the excitement of painting graffiti onto silent subway cars in deserted yards, watching for the police, stealing the paints, organizing the expeditions.

There are more imaginative proposals, such as hiring them to paint the cars in the first place. But one can imagine the technical problems involved in handing over such good (and well-paid) jobs to 11- to 16-year-olds.

One proposal after another has been considered, evaluated, tried. The police have not given up—far from it. Their favored approach, if it could be financed, would be intensive work, on a one-to-one basis, by youth workers (students in psychology and sociology), a "big brother" program that would involve young graffitists in other activities and introduce them to young adults who would help find other outlets for their energies. But one wonders whether the youth workers might not be converted by the graffiti artists, who do not believe they are doing anything wrong. They do see their graffiti as art and self-expression (and create albums in which fellow graffiti artists reproduce miniatures of their designs—the police have a few of these, which are quite beautiful examples of urban, vernacular art). They are not at this point in their lives engaged in the uglier crimes that are so common in New York. What arguments would the youth workers, who might themselves reflect the culture

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that has given approval to making graffiti (as to smoking marijuana, and other formally illegal activities), be able to present to convince the young graffiti artists to give up their work? What could they provide them in its place?

There have been some efforts to divert the energies of the young graffiti artists from the sides of subway cars to canvases. Some of the graffitists produce canvases for sale, with the assistance of the adults who work with them. Some have gone on to art school—have indeed gained fellowships because adults working with them saw talents that could be developed. But it is hard to imagine this kind of thing making much of an impact on the problem, though it may be a solution for a dozen or two a year. Indeed, these very opportunities might be attractive enough to serve as an incentive for others to try to develop and demonstrate their talents by working on subway cars!

As one learns more about the graffiti artists, realizes that most of them are known to the police, that their more serious crimes (if they move on to them) will take place after they have given up graffiti, and that among all the things urban youth gangs may specialize in this is not the worst—then, one's anger at the graffiti makers declines. One begins to accept graffiti as just one of those things that one has to live with in New York. But this tolerance should not lead us to forget the 3-million subway riders per day who do not have the opportunity to study the graffiti problem, who are daily assaulted by it, and who find it yet another of the awful indignities visited upon them by a city apparently out of control and incapable of humane management. Even if graffiti, understood properly, might be seen as among the more engaging of the annoyances of New York, I am convinced this is not the way the average subway rider will ever see them, and that they contribute to his sense of a menacing and uncontrollable city. The control of graffiti would thus be no minor contribution to the effort to change the city's image and reality.

Systematic deterrence?

But how? Chief Garelik suggests some food for thought. Why are there so few graffiti on trucks, he asks. Trucks provide great surfaces, without windows or doors. If one motive for making graffiti —as the kids tell us—is seeing one's name being sped through the four contiguous boroughs, and the thrill of the thought that one's name will be seen by people unknown, then trucks should offer an

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attractive opportunity. But truck drivers beat up the kids they find trying to deface their trucks! And there are no graffiti on trucks.

Why are there no graffiti on commuter railroad trains? Their car yards are as accessible as those in which subway cars are stored, and their trains run through low-income areas. Perhaps it is because the graffiti artists and their friends don't ride the commuter lines and don't care to advertise their skill and daring in unknown places. But Chief Garelik has a simpler answer: The maintenance men for those lines use buckshot. "They do?" I asked incredulously. Well, that is what the kids believe. Either there was such an experience, or rumor of it, and that seems enough to protect the commuter cars. Certainly here is a hint of something that might work. In fact, early in the graffiti plague, there was a proposal to use guard dogs in the subway yards. It might have been impractical for various reasons. But it might have worked, too. In any event, there was such an uproar at the prospect of juveniles being bitten or mauled that the idea was abandoned.

So it is possible, perhaps, to deter graffitists. But it is not possible to deter them through the regular juvenile-justice system, in which a weary judge, confronted by many difficult and intractable problems, can think of nothing better than asking Johnny to promise he won't do it again. Punishment at the scene of the crime seems to deter marvelously: being beaten up by a truck driver or facing a burst of buckshot if you are caught. The dogs also might have worked.

In other words, there are methods to deter graffiti artists. But are there any ways to institutionalize these methods in an orderly, rule-bound, and humane system of law enforcement? It is not possible to tell the transit police, "Don't bring the kids in, just beat them up." We would not want the transit police to do so, and the transit authorities would not want to encourage such uncontrolled and uncontrollable behavior: A transit police force of 3,000 members must be governed by rule and order rather than informal sanctions, informally applied. And rule and order mean that the graffiti artists are brought into a system of juvenile justice which has more important crimes to deal with, and in which punishment, if any, will be minimal.

Is it possible to apply deterrence in a systematic way in a large bureaucratic system? It should be. Chief Garelik points out that a natural experiment, comparing the treatment of those who avoid paying tokens in two boroughs, suggests that deterrence does reduce illegal acts. In one borough, for some reason, those given sum-

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monses for trying to get into the subway without paying a fare were fined on the average 99 cents; in the other, during a comparable period, they were fined on the average $10.45. In the first borough, 20 percent of those caught were repeat offenders; in the second, only 3 percent. Obviously there are other plausible differences between the two boroughs that would have to be taken into account to explain why fare-avoiders in one are so much more commonly repeaters than in the other. But it is not unreasonable to take as a first possibility that in one borough this act is more severely punished.

Undoubtedly there is some form of deterrence that would reduce graffiti-writing. Some graffiti artists, we are told, inform on others when threatened by a term in a tough detention center. (Whether the police could deliver on such a threat is another matter.) Would a few days in the detention center have more effective results than a few weekend sentences to erase graffiti? What would be the problems in trying to test such an approach? In trying to institute it?

New approaches

Aside from deterrence approaches, there are what we might call "education" or "therapy" approaches. Trained juvenile officers, social workers, counselors, or other youth workers would work with the apprehended graffiti artist, either directly or by finding some social agency with which he would be required to maintain contact. Such programs have been begun on an experimental basis. Chief Garelik favors such approaches, has gotten some grants to institute them, and needs more such grants. It is certainly premature to evaluate these new programs, though certain considerations immediately come to mind. Unlike the case with some other crimes, it is difficult to enlist a youth's conscience or sense of right and wrong to combat his desire to make graffiti. There will be problems as well in getting youth workers to discourage graffiti-writing, both because it does not offend their sensibilities, and because they may view it as a comparatively insignificant offense. Nevertheless, these new programs constitute one of the few approaches that is available, and, in light of the proven ineffectiveness of other approaches, are certainly worth trying.

Graffiti raise the odd problem of a crime that is, compared to others, relatively trivial but whose aggregate effects on the environment of millions of people are massive. In the New York situation especially, it contributes to a prevailing sense of the incapacity of government, the uncontrollability of youthful criminal behavior, and

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a resultant uneasiness and fear. Minor infractions aggregate into something that reaches and affects every subway passenger. But six years of efforts have seen no solution. Graffiti of the New York style came out of nowhere, and strangely enough do not afflict other mass-public-transportation systems, except for that of Philadelphia. Maybe graffiti will go away just as unexpectedly, before we find a solution. But in the meantime, 500 youths are contributing one more element to the complex of apparently unmanageable problems amidst which New Yorkers live.

Elizabeth Kurshan assisted with the research for this article.

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Social science and the courts

DANIEL PATRICK MOYNIHAN

From the time, at the beginning of the century, that American legal scholars and jurists began to speak of the "science of law" it was rather to be assumed that the courts would in time find themselves involved with the social sciences. This was perhaps more a matter of probability than of certainty, for it was at least possible that the "legal realists," or "progressive realists," as they are variously denominated, would have found the social science of that and subsequent periods insufficiently rigorous for their standards—a case at least some social scientists, then as now, would have volunteered to make for them. But Pound and Cardozo and Holmes were indeed realists, and seemingly were prepared to make do with what was at hand, especially when there was such a correspondence with the spirit and structure of their own enterprise.

In 1908, Pound in a seminal article, "Mechanical Jurisprudence," in the *Columbia Law Review* declared: "We have . . . the same task in jurisprudence that has been achieved in philosophy, in the natural sciences, and in politics. We have to . . . attain a pragmatic, a sociological legal science."

This passage suggests, of course, an alternative explanation for the easy acceptance of the social sciences by the lawyers: to wit, that

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Pound and his associates were not themselves intolerably rigorous. For what else are we to think of the suggestion, even in 1908, that philosophy and politics had been advancing arm and arm with the natural sciences toward some presumed methodological maturity!

Equally we may wonder at the legal realists' seeming perception of "natural law" as pre-scientific. It may have been for them, but it was nothing of the sort to the framers of the Constitution, for whom "natural law," as we think of it, and scientific law were parts of an integrated understanding of the behavior of both physical objects and human beings. As the late Martin Diamond has reminded us, the framers' respect for human rights, which constituted liberty as they understood it, was not an idiosyncratic "value" of a remote culture. Rather, liberty was seen as *the* primary political good, of whose goodness any intelligent man would convince himself if he knew enough history, philosophy, and science. Indeed, it was because our constitutional principles seemed so self-evident, so much at harmony with the results of enquiry in other fields, that the Founders felt such confidence in them.

But this is perhaps to cavil. The point is that as between the legal scholars and jurists of two and three generations ago, who were seeking to establish a "science of law," and those seeking to establish scientific principles and methods in, say, sociology, there was indeed that symmetry of technique and purpose which Paul Horgan has observed in the arts and sciences of most eras.

There was a corresponding bustle of organization and the discovery of likemindedness among persons who may have thought themselves quite alone in their new and sometimes radical purposes. At the same time that a new judicial philosophy was making its appearance, the social sciences were organizing themselves. The Anthropological Association was founded in 1902; the American Political Science Association in 1903; the American Sociological Association in 1905. The innovators in the legal and academic realms were, in the popular saying of the period, made for each other.

Progressive realism

Even so, the process whereby social science argument became more prominent in the proceedings and decisions of American courts was gradual, and followed the equally gradual rise to ascendency of the "progressive realists," to use Alexander M. Bickel's term, from whom, as he wrote, "the Warren Court traced its lineage."

In its most famous decision, *Brown v. Board of Education* (1954),

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the Warren Court drew upon a spectrum of social science—ranging from discrete psychological experiments to broad-ranging economic and social enquiry—in reversing the Court's earlier ruling in *Plessy v. Ferguson* (1896), which had established the separate-but-equal standard in racial matters. Taking their lead from the Supreme Court, subordinate Federal courts began to resort to social-science findings to guide all manner of decisions, especially in the still troubled field of schooling, but extending to questions of tax policies, of institutional confinement and care, of crime and punishment, and a hitherto forbidding range of ethical issues.

Social science had become familiar to the courts in the course of hearing advocacy before them. From the time that Louis D. Brandeis began to argue facts and figures before various courts—arguing, however, for judicial restraint in the face of legislation establishing minimum labor standards—judges had had to contend with social-science arguments presented *to* them. Brandeis's data consisted in the main of social statistics, the early measurement devices on which most subsequent social research has been based. But it should be emphasized that the "Brandeis brief" did not assert that its view of the facts was totally accurate; its purpose was merely to demonstrate that the legislature, in acting as it did, had a reasonable basis, that the facts *might* be accurate in holding, for example, that minimum standards were necessary to protect workers' health.

The Supreme Court itself soon became accustomed to and comfortable with this kind of brief. The Court's capacity to cope with social-science arguments was much on display, for example, in *Witherspoon v. Illinois* (1968). At issue was the constitutionality of an Illinois statute providing for the exclusion of jurors having scruples against the death penalty. Mr. Justice Stewart, for the Court, took note of the social-science arguments presented by those contending that the statute was illegal:

> To support this view, the petitioner refers to what he describes as 'competent scientific evidence that death-qualified jurors are partial to the prosecution on the issue of guilt or innocence.'

The Justice, in a footnote, took further note of the academic papers —nicely and accurately describing them as "surveys"—which the petitioners had presented. He went on, however, to declare:

> The data adduced by the petitioner . . . are too tentative and fragmentary to establish that jurors not opposed to the death penalty tend to favor the prosecution in the determination of guilt.

In a footnote to this passage, the Justice commented on these studies

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in language that will be familiar to graduate student and thesis committee alike:

> We can only speculate . . . as to the precise meaning of the terms used in those studies, the accuracy of the techniques employed, and the validity of the generalizations made.

Having thus acquitted itself in the matter of methodological rigor, and having in effect rejected the social-science data presented by the petitioners, the Court went on to rule *for* them, and to rest its decision on *other* social-science data! Specifically, Justice Stewart found that ours is a nation "less than half of whose people believe in the death penalty." To establish this he cited opinion polls for the year 1966, as compiled in the *International Review on Public Opinion*, and judged that an Illinois jury culled of "all who harbor doubts about the wisdom of capital punishment" would thus speak only "for a distinct and dwindling minority." Accordingly, the statute was deemed to fail under the Sixth Amendment.[1]

Law, social science, and the future

In these changed—or perhaps it were better to say these now-developed—circumstances it would seem useful to suggest, from the point of view of the social sciences, something of the limitations of this kind of information in the judicial process. If it is quite clear that the courts employ social science with considerable deftness on some occasions, then it must be allowed that on other occasions the courts have got themselves into difficult situations by being too casual, even trusting, about the "truths" presented to them by way of research on individual and group behavior. Here it is not necessary to get into the question of where the courts might have erred. If there are those who wish to challenge particular decisions, they are free to do so under the arrangements so ably, indeed wonderfully, presided over by the American judiciary itself. It is enough to state that the social science involved in a great many judicial decisions—including, for that matter, *Brown* itself—has been sharply criticized by social scientists with differing or competing views.

Hence there are two points which a social scientist would ask jurists to consider before deciding how much further to proceed, and in what direction:

[1] It may be that few persons will think of public-opinion polls as social science, but they represent one of our largest achievements in the field of direct measurement, having been developed largely by Lazarsfeld and his colleagues at Columbia University in the 1930's and 1940's.

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The first point is that social science is basically concerned to predict future events, whereas the purpose of the law is to order them. In this respect both are unavoidably entangled with politics which, as Maurice Cranston has put it, is an argument about the future. But where social science seeks to establish a fixity of *relationships* such that the consequences of behavior can be known in advance —or, rather, narrowed to a manageable range of possibilities—law seeks to dictate future performance on the basis of past *agreements*. It is the business of the law, as it were, to order alimony payments; it is the business of social science to try to estimate the likelihood of their being paid, or their effect on work behavior and remarriage in male and female parties, or similar probabilities.

In the end social science *must* be a quantitative discipline dealing with statistical probabilities. Law, by contrast, enters the realm of the merely probable at some risk. For the law, even when dealing with the most political of issues, must assert that there are the firmest, established grounds in past settlements on which to order future settlements. The primary social function of the courts is to preserve the social peace embodied in such past settlements, and to do this by establishing a competent, disinterested forum to which parties in dispute can come, ask, and be told *what it was we agreed to*. Hence Marshall's dictum in *Marbury v. Madison:* "It is emphatically the province and duty of the judicial department to say what the law *is*."

To restate, for emphasis: The courts are very much involved with the future; indeed to declare the future is what they do, and not infrequently they do so in the largest conceivable terms. (Bickel writes that the Warren Court "like Marshall's, may for a time have been an institution seized of a great vision, that it may have glimpsed the future, and gained it.") But the basis for ordering the future is that which the judges conclude were the standards and agreements reached in the past for the purpose of such future ordering.

Hence, also, the concern of the courts to be seen to be above politics. If they are to keep the King's peace they had best not be seen to be involved in planning the King's wars. And so long as the courts confine their references to established *past* agreements —constitutions, customs, statutes, contracts—they are protected by the all-important circumstance that among the things we have agreed to is that for these purposes *the past is what the courts say it is*. It is a living past, and clearly enough it changes, but only the courts can make these changes. It is all very well for others to have opinions about what the Sixth Amendment intends with respect to

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the composition of juries, but it is what Justice Stewart says, in the company of a sufficient number of his colleagues, that decides, *and there is no way to disprove him.* In this sense, what the court decrees to be the past thereupon has the consequence of *being* the past. On the other hand, when the courts get into the business of predicting the *future* by the use of various social-science techniques for doing this, then others, who need not be lawyers even, much less judges, can readily dispute them, and events will tell who is right and who is wrong.

In this circumstance, perhaps the first thing a jurist will wish to know about the social sciences is: How good are they? How well do they predict? Have they attained to any of the stability that Pound observed in the natural sciences in the early years of the century? The answer must be that the social sciences are labile in the extreme. What is thought to be settled in one decade is as often as not unsettled in the very next; and even that "decent interval" is not always observed. Consider, for example, the cycles of professional opinion concerning the desirability of putting persons with various behavior disorders in institutions, as against maintaining them in their communities. True, there are some areas of stability. With a sample of 500 or so persons, a "psephologist" can predict the popular vote in a Presidential election within a few percentage points. But who will foretell the fate of the administration that follows?

It is fair to state that the unsettled condition of the social sciences represents something of a disappointment, even a surprise. It was thought, especially in economics, that matters were much further advanced than they now appear to be. With respect to the slow progress, or nonprogress, of the social sciences a range of explanations is put forward. It is said that the subject matter is more complex than that of the physical sciences. Experimental modes are usually unattainable. The disciplines are relatively new. They probably have not attracted their share of the best talent. Other reasons come readily enough to mind. But the fact of slow progress is clear enough. The judiciary is entitled to know this, for it needs to acquire the habit of caution, the more perhaps when the work presented to it declares itself to be the most rigorous and "scientific."

Consider the venerable, yet always troubled and constantly shifting "advice" which social science has to offer in the matter of crime and punishment, a subject of the greatest relevance to the judiciary. For the longest while, 20th-century criminology, such as it was, tended to hold that capital punishment did not deter capital crimes. This tendency persisted until the 1960's, when a number of empirical

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analyses appeared which seemed to establish a "negative association between the level of punishment and the crime rate." Concepts borrowed from economics were employed, often with great elegance, and once again (!) it was discovered that as price goes up demand goes down. We began to talk of the "elasticity of the crime rate to changes in the probability of imprisonment." Next, studies appeared which seemed to establish that capital punishment *saved lives,* as it were, by preventing subsequent capital crimes. This was important and responsible research, and bid fair to make a considerable impression on public and even judicial policy, coming as it did at a time when the courts were banning capital punishment and elements in the public began to demand its return.

In 1976, however, the National Academy of Sciences established a panel to study the relation between crime rates and the severity of punishments. Two years later, the panel concluded that "the available studies provide no useful evidence on the deterrent effect of capital punishment." Thus, research lends support to the decision of the Supreme Court in *Gregg v. Georgia* (1976), in which Justice Stewart, for the Court, declared:

> Statistical attempts to evaluate the worth of the death penalty as a deterrent to crimes by potential offenders have occasioned a great deal of debate. The results simply have been inconclusive.

It could perhaps be argued that Justice Stewart was judging just a little ahead of the evidence, *Gregg* having preceded the NAS panel report by two years. But if it is accepted that the Courts ought to be hesitant to the point of reluctance before accepting any social-science finding as final, Justice Stewart's 1976 cautionary decision seems warranted indeed.

For it is a melancholy fact that, recurrently, even the most rigorous efforts in social science come up with devastatingly imprecise stuff. Thus, a few lines after the *Summary* of the National Academy of Sciences study informed us in plain enough language that execution may or may not deter murder, another murkier passage sums up the evidence on the effect of imprisonment on other kinds of crime:

> Since the high-crime jurisdictions that are most likely to be looking to incapacitation to relieve their crime problems also tend to have relatively lower rates of time served per crime, they can expect to have the largest percentage increases in prison populations to achieve a given percentage of reduction in crime.

As English composition, the sentence itself calls for punishment of some sort. To say that high-crime jurisdictions can expect to "have"

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the largest percentage increases in prison populations, rather than to "require" them or some equivalent term, is to leave the reader with a sense of surpassing fuziness that all manner of mathematical notation does not overcome. Or conceal. Thus, further in the same study, we are told that the lower bound on the probability of arrest for an "index" offense is given by the formula

$$q\wedge > \frac{\lambda q\wedge T\left(\frac{V}{A}\right)}{\frac{C}{A}-\frac{V_1}{A}}$$

and we are also told that if prison use is expanded there is a potential for "two to fivefold decreases in crime." Now one need not be much of a mathematician to know that a twofold decrease in anything will likely lead to antimatter, and that a fivefold decrease might well produce a black hole.

The profession, in a word, has a way to go.

Social science and politics

The second point is that social science is rarely dispassionate, and social scientists are frequently caught up in the politics which their work necessarily involves. The social sciences are, and have always been, much involved with problem-solving and, while there is often much effort to disguise this, the assertion that a "problem" exists is usually a political statement that implies a proposition as to who should do what for (or to) whom. (This essay, for example, which suggests that there are limits to the value which social science can have for the courts, will almost certainly be searched for clues as to whether its implications are politically liberal, or conservative, or whatever.) Social scientists are never more revealing of themselves than when challenging the objectivity of one another's work. In some fields almost *any* study is assumed to have a more-or-less-discoverable political purpose.

Moreover, there is a distinct social and political bias among social scientists. In all fairness, it should be said that this is a matter which social scientists are quick to acknowledge, and have studied to some purpose. It all has to do, one suspects, with the orientation of the discipline toward the future: It attracts persons whose interests are in shaping the future rather than preserving the past. In any event,

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the pronounced "liberal" orientation of sociology, psychology, political science, and similar fields is well established.

This observation, however, leads us to one of the ironies of the present state of the social sciences. The explanatory power of the various disciplines is limited. Few serious permanencies are ever established. In a period of civilization in which the physical sciences are immensely advanced, when the methodology of proof is well established, and when discoveries rush one upon the other, there are not many things social science has to say. To the degree that it strives for the rigor of the physical sciences, its characteristic product is the null hypothesis, i.e., the discovery that two social phenomena are *not* causally related. In some circumstances this can be rather liberating for social policy. There are, for example, few recent works in social science that have had the immediate impact of James Q. Wilson's *Thinking About Crime*. After examining the research concerning the effect of rehabilitation programs on criminals in this country and abroad, Wilson concluded that no consistent effects could be shown one way or the other. Seemingly, all that could be established for certain about the future behavior of criminals is that when they are in jail they do not commit street crimes. Two centuries of hopes collapsed in that proposition, and not a few illusions. But out of the wreckage came the idea that fixed and predictable prison terms are a sensible social policy, and in short order this was being advocated across the spectrum of political opinion. Indeed, if anything, while social scientists tend to be liberal, the tendencies of social-science *findings* must be judged conservative, in that they rarely point to the possibilities of much more than incremental change. In 1959 the Yale political scientist Charles Lindblom set this forth as a necessity, the one *law* of social change, in a celebrated article entitled "The Science of Muddling Through."

The political orientation of the social sciences has been particularly evident (and is, I believe, least objectionable) in the shifting fashions in research topics. One will find a score of books, mostly of the period 1910-1950, about trade unions and strikes for every serious study of a middle-class organization such as the American Bar Association. But it is also to be noted that these preferences change with some regularity. Trade unions, having been judged "conservative," are not much written about any longer. Of late, community organizations, such as those funded by government anti-poverty efforts, have been in vogue. Tomorrow, doubtless, it will be something else again.

This is not to be understood to suggest any deliberate attempt to

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distort. One has little more than impressions to offer here, but it seems mostly to be a matter of a somewhat-too-ardent searching for evidence that will help sustain a hoped-for conclusion. Sometimes the search succeeds; just as often it does not. Where there is deliberate fudging in the research, success is brief and retaliation can be truly termed draconian. The social sciences are serious professions, seeking to become ever more professional. They are also highly competitive, at times perhaps damagingly so. Edward C. Banfield has described this as the Fastest-Gun-in-the-West-Effect—which is to say, the melancholy knowledge of anyone briefly on top of any particular subject matter that the graduate schools are abrim with young scholars who dream of making their own reputations by bringing him down in a brief, violent encounter. Such efforts may or may not succeed. But *anyone* who brings questionable data or methodology into the various fields can expect to be devastated. And even the most impeccable work will be challenged simply because "it is there."

The prudent jurist will be aware of this, and take it into account. That this can be done was splendidly demonstrated by the Supreme Court in its decision in *San Antonio School District v. Rodriguez* (1973). Here a class action on behalf of certain Texas schoolchildren was instituted against school authorities challenging the constitutionality, under the equal protection clause of the 14th Amendment, of the state's system of financing public education. The system was characterized by a heavy reliance on local property taxes, which is associated with substantial differences in per-pupil expenditure. Now it happens that just a very few years before this issue came to the Court, a series of research findings appeared which were quite devastating to the previous assumption that achievement in education was more or less a direct function of spending. Best understood, this new research seemed to show that, after a point, this just wasn't so.[2]

The *Rodriguez* case was the culmination of an effort, primarily the work of academics, to disestablish the general American pattern of local-school-district financing in favor of statewide, or even nationwide systems, with uniform per-pupil expenditures. (In passing, it may be noted that moving an issue *upwards* in the federal system has been well documented by political scientists to be a technique of

[2] In the interest, as lawyers say, of full disclosure, I should state that this is the intrepretation that Frederick Mosteller and I presented in a reanalysis of the Coleman data, in *On Equality of Educational Opportunity* (1972). Mr. Justice Powell cites our work, along with that of others, in a passage in his decision in *Rodriguez*.

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effecting social reform.) In briefest summary, these scholars did not anticipate that their research establishing differentials in school expenditure would be vitiated, at least in part, by the enquiries that were simultaneously taking place which cast grave doubt on just what significance was to be attributed to such differences.

In any event, the matter did not escape the attention of Justice Powell, who, writing for the majority, observed:

> On even the most basic questions in this area the scholars and educational experts are divided. Indeed, one of the major sources of controversy concerns the extent to which there is a demonstrable correlation between educational expenditures and the quality of education—an assumed correlation underlying virtually every legal conclusion drawn by the District Courts in this case.

Further on, Justice Powell declared, "We are unwilling to assume for ourselves a level of wisdom superior to that of legislators, scholars, and educational authorities in 50 states," and found that the Texas system of school financing met the constitutional standard of the equal protection clause. It is not necessary to side either with the majority or the dissenting justices in this latter judgment to state with some confidence that, if the District Courts depended overmuch in their decisions on the existence of a "demonstrable correlation between educational expenditures and the quality of education" —which Justice Powell says they did, and no dissenting Justice said they did not—then the District Courts either did not know their social science or, perhaps, did not know their social scientists.

The impact of social science

The attentive reader might well be given pause by the somewhat remonstrative suggestion that "the District Courts . . . did not know their social science." Since when, it might well be asked, has this been required of judges? Is it not sufficiently demanding to expect that they will know the law?

No, alas, it is not. Herewith we encounter what is arguably the major impact of social science on law.

The social sciences may be at an early state of development, but this has not in the least inhibited their assertiveness. It may well have served to abet it. For the moment their ambitions are truly imperial. There is little by way of human behavior which the social sciences do not *in theory* undertake to explain, to account for.

As a result, there are fewer and fewer areas of social behavior for which traditional or "common-sense" explanations will any longer

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suffice in serious argument. A cursory reading of the District Court decisions which preceded *Rodriguez* suggests that the judges' views on the relation of educational expenditure to educational achievement were based on nothing more than common-sense everyday opinion. And this is the point. Common-sense everyday opinion no longer persuades. Everybody asks: who *knows*? If it is theoretically possible to know something—and there are few relationships about which it is not theoretically possible to know *something*—then until the research is done, no one is in a very good position to speak!

If we may adopt for a moment the lawyers' term "material," then we may say that the range of what is material in lawsuits is now greatly expanded—or will be as the courts submit to the logic, or perhaps it may be better to speak of the spirit, of the social sciences. Some years ago Kenneth Boulding spoke of the advent of the social sciences as an historical event comparable for society to the beginnings of consciousness in human beings. That we are only at the beginning of this era does not at all limit what we expect of it; it may be, and probably is, the case that we greatly exaggerate. But that changes nothing as yet. The Supreme Court in *Rodriguez* found there was *no evidence* to support the charges. Accordingly, the Texas school-financing system was found Not Guilty. (Or was it a Scottish verdict: Not Proven?)

Thus does social science rend the "web of subjectivity," the phrase which Bickel used to describe aspects of the Warren Court. His references were primarily to the Court's reading of the past. On more than a few occasions, he wrote, "the Warren Court has purported to discover in the history of the Fourteenth Amendment, and of the Thirteenth, and of other constitutional provisions, the crutch that wasn't there." Now this can be seen to be a traditional enough critique. Here the Court interprets the past, and it is altogether to be expected that legal scholars should occasionally criticize the Court (however gently, in Bickel's case) for its interpretation of the past. But where the Court essays to predict the *future*, which is the realm of social science, the idiosyncratic and the subjective are even more conspicuous, and more subject to criticism.

As litigation concerning educational matters has illustrated some earlier propositions, it may do so also with respect to this last, most important one. Commencing at least with the *Brown* decision, the Supreme Court has held that "education is perhaps the most important function of state and local governments." But a decade prior to *Brown*, the Court ruled in *Everson v. Board of Education* (1947) that the First Amendment requires that government assistance to

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schools that are not in the public sector, strictly defined as not operated by government, must be severely restrained, and as near as possible nonexistent.

Here was a common enough situation for the courts. They were asked to determine what it is the Constitution decrees with respect to matters that clearly were remote from the thoughts of those who drafted the document, including its various amendments. Anyone who will trouble to read the debates concerning this part of the First Amendment—and this will not entail a great deal of trouble, for the question was debated for the equivalent of about a day in the House and a day in the Senate and the entire record in the *Annals of Congress* takes up only 119 lines—will find no mention of aid to education. Hence judges have had to interpret as best they could.

Now in the judgment of some, they have quite misinterpreted this history. In the manner that Bickel chides the Warren Court for discovering things in the history of the 13th and 14th Amendments that simply are not there, scholars such as Walter Berns, Michael Malbin, Antonin Scalia, and Philip Kurland find that, with respect to aid to nonpublic schools, the Court's interpretation of the establishment clause is non-historical. In his 1962 study, *Religion and the Law*, Philip Kurland writes: "Anyone suggesting that the answer, as a matter of constitutional law, is clear one way or the other is either deluding or deluded."

In the interest, once more, of full disclosure, I must state that I quite agree with the critics of the Court in this matter. In my view, the only *truly* comparable situation is that long period when the Supreme Court repeatedly claimed to find in the 14th Amendment a whole series of restrictions on the power of legislatures to enact labor legislation. Thus in *Lochner v. New York* (1905), the Court—striking down a 60-hour-work-week law—said that it was not at all "a question of substituting the judgment of the Court for that of the legislature," but simply that there was "no reasonable ground for interfering with the liberty of person or the right of free contract." Now there was no real difficulty in 1905 in discovering the purposes for which the 14th Amendment had been adopted, and establishing that it was in no wise enacted to prevent the New York State legislature from regulating the hours of bakers. But such nonsense had been solemnly invoked by the Supreme Court in *Allgeyer v. Louisiana* (1897) in the closing years of the 19th century and was only overruled in the fourth decade of the 20th century. It is all forgotten now, save by historians, but it was once a burning issue of American politics—as it should have been.

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In just this manner, the establishment clause has been held to prevent legislatures from providing various forms of assistance to church-related schools, albeit that the establishment clause has the plain and unambiguous meaning—reflecting the Founders' intention—that Congress will not establish a national religion.

There are those who are not happy with this state of affairs, but few, one would venture, who are actively angry. We go through these things every so often, and have done so for generations. One day a Justice will come along who will make the equivalent point that Holmes made in *Lochner* when he declared, "The 14th Amendment does not enact Mr. Herbert Spencer's *Social Statics*." It will come to be seen that the Court's rulings on aid to private schools merely reflected a particular religious point of view—i.e., that there is no public interest in the promotion of religion—which reached its peak of intellectual respectability in the 1920's and 1930's, the period in which most of the judges who made the decisions were educated.

Having stressed the shaky reliability of social science, a certain kind of fairness suggests that the infallibility of judges might usefully be questioned also. The establishment-clause decisions are an intellectual scandal. Without intending to do so, the courts in the school-aid cases have been imposing on the country their *own* religious views. This point was well understood in 1841 by John C. Spencer, Tocqueville's first American translator and New York's Secretary of State and Superintendent of Public Schools. To those who feared use of public funds for sectarian purposes, Spencer in an official report replied that all instruction is in some ways sectarian:

> No books can be found, no reading lessons can be selected, which do not contain more or less of some principles of religious faith, either directly avowed, or indirectly assumed.
>
> Even the moderate degree of religious instruction which the Public School Society imparts, must therefore be sectarian; that is, it must favor one set of opinions in opposition to another, or others; and it is believed that this always will be the result, in any course of education that the wit of man can devise.
>
> On the contrary, it would be in itself sectarian; because it would be consonant to the views of a peculiar class, and opposed to the opinions of other classes.

All this will be borne with sufficient good will and even good humor. The greater problem is for the courts, and it is a problem much complicated by social science. For social science affects what the court *can* say. Thus the case of *Tilton v. Richardson* (1971), which is the controlling decision regarding Federal aid to church-

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related schools. The Higher Education Facilities Act of 1963 provided Federal construction grants for college and university facilities. Tilton *et al.* sued, contending that grants to four church-related colleges and universities in Connecticut had the effect of promoting religion. The Court held that this was not so, even though it would never tolerate a Federal statute that provided construction grants to church-related high schools or suchlike institutions. Colleges and universities, the Court said, are different from elementary and secondary schools where religious matters are concerned, and college students are different from high school students.

An unassailable argument

Before grappling with the decision of the majority, it will help to touch upon the dissent of Mr. Justice Douglas, who thought such aid to church-related colleges to be unconstitutional. It was an impassioned dissent: in his own words, a despairing dissent. The respect, he said, "which through history has been accorded the First Amendment is this day lost." Before coming to this sad conclusion, he presented an argument which some may view as wrong, but which is also logically quite—or almost—unassailable. By contrast, the less idiosyncratic decision of the majority is nonetheless indefensible, and it is a weakness which the advent of social science has brought about.

There is *one* unimpeachable sentence in Justice Douglas's opinion. "The First Amendment," he writes, "bars establishment of a religion." Just so. There was to be no established religion such as the Church of England or the Church of Ireland of that period. The meaning and intent of the amendment was most clear in the version considered by the House of Representatives on August 15, 1789, which read "no national religion shall be established by law." Elbridge Gerry objected, as the word "national" was a matter of contention between Federalists and Anti-Federalists, and the final version emerged, accessible in meaning to anyone who can read English. No established religion. Surely this has nothing to do with construction grants made available to religious institutions of *all* denominations. Hence a judge who is going to contend that it does, had best give considerable thought to what kinds of available evidence will tend to prove or disprove his contention. On this score Douglas was unassailable. He advanced arguments that some will find curious, but which none can refute.

To begin with, he would brook no distinction between levels of

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"parochial schools." They all looked alike to him. There is, he stated, a "dominant religious character" to all such schools. He then introduced in evidence the work of Loraine Boettner. A passage from Boettner's book, *Roman Catholicism,* is reproduced in a footnote. It should be clear, Boettner writes, "that a Roman Catholic parochial school is an integral part of that church." The title of ownership is vested in the bishop as an individual, a person "who is appointed by, who is under the direct control of, and who reports to the pope in Rome."

Now this "pope in Rome" is a person much on Mr. Boettner's mind. His book was published in Philadelphia in 1962, by the Presbyterian and Reformed Publishing Company, but it could as well have appeared in Edinburgh four centuries earlier. To him, very simply, the pope is an Antichrist; his church is an heretical church; its teachings utterly subversive of true religion. As for the followers of the pope, they are, in Boettner's view, to a greater or lesser degree, agents of papal subversion. On one page of his book, for example, he states that Roman Catholics ought not to be allowed to teach in *public* schools.

Boettner's full view of the matter, with respect to schools, is seen in another passage from this book which Douglas reproduces word for word in his concurring opinion in *Lemon v. Kurtzman* (1971):

> In the parochial schools Roman Catholic indoctrination is included in every subject. History, literature, geography, civics, and science are given a Roman Catholic slant. The whole education of the child is filled with propaganda. That, of course, is the very purpose of such schools, the very reason for going to all of the work and expense of maintaining a dual school system. Their purpose is not so much to educate, but to indoctrinate and train, not to teach scripture truths and Americanism, but to make loyal Roman Catholics. The children are regimented, and are told what to wear, what to do, and what to think.

Now here we are at the crux of the matter: Catholic schools do not "teach scripture truths." In Boettner's view Roman Catholic schools are heretical. In Douglas's view they are unconstitutional, i.e., they are not *Presbyterian.*

Now this is a venerable view, entertained over the years by many more Scotsmen than the Justice. Equally interesting is the passage that Douglas quotes in his dissent in *Tilton* from an article by Dr. Eugene Carson Blake which appeared in *Christianity Today* in 1959, the year after Blake completed his distinguished eight-year tenure as Stated Clerk of the General Assembly of the Presbyterian Church

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of the United States of America. (Douglas, to be quite fair, identifies him as "Dr. Eugene C. Blake of the Presbyterian Church.") Blake, who had studied in Edinburgh as a youth, had a lively imagination of the sort associated with that city. He had also, more rare, the gift of prophecy. It was his judgment that owing to the tax-exempt state of church properties "it is not unreasonable to prophesy that with reasonably prudent management, the churches ought to be able to control the whole economy of the nation within the predictable future." This alarmed him:

> That the growing wealth and property of the churches was partially responsible for revolutionary expropriations of church property in England in the 16th century, in France in the 18th century, in Italy in the 19th century, and in Mexico, Russia, Czechoslovakia, and Hungary (to name a few examples) in the 20th century, seems self-evident.

Now this is a range of historical reference which Gibbon would have admired, and in our time perhaps only Toynbee might have essayed. It is also of course gibberish, much as Boettner is . . . well, if not harmless, surely not serious. But these arguments are all but irrefutable. Boettner thinks the pope is an Antichrist. Douglas cites Boettner. *Who is to disprove them?* Blake thinks rich monasteries cause peasant revolts. Douglas cites Blake. *Who is to disprove them?* Douglas chose his ground well. He asserted a range of particular values and ultimate truths which he claimed to find in the Constitution; and that was that.

By contrast, the majority of the Court chose the most exposed arguments on which to rest its decision. The Chief Justice, for the majority, stated that "there are generally significant differences between the religious aspects of church-related institutions of higher learning and parochial schools." Two particular differences are cited. First, that religiously-affiliated colleges and universities do not attempt to indoctrinate their students while religiously-affiliated elementary and secondary schools do. Second, that college students are different, that "college students are less impressionable and less susceptible to religious indoctrination," that the "skepticism of the college student is not an inconsiderable barrier to any attempt to subvert the Congressional objectives and limitations."

Enter social science. For these are *researchable* subjects. The facts are *discoverable,* if not easily. It is no longer possible to make such statements and expect to be taken seriously unless one has proof.

The Court in a sense acknowledges this. Proofs are provided. One is tempted to observe that, as in the evocation of the Dreyfus case in *Penguin Island,* this was fatal. For what the Justices offer with

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respect to the assertion that "there are generally significant differences between the religious aspects of church-related institutions of higher learning and parochial elementary and secondary schools" is a *Harvard Law Review* article by Paul A. Freund. And what does Professor Freund report? He reports that "institutions of higher learning present quite a different question, mainly because church support is less likely to involve indoctrination and conformity at that level of instruction." The argument grows tautological. What is Freund's evidence? What studies? What survey data? *None*. No evidence of any kind. Freund is among the most distinguished legal scholars of the age. But it is not for anyone to describe the pedagogical practices of a group of colleges and universities without having inquired into the matter, preferably in accordance with reasonably well-established methodological rules. "Less likely," will not do. A modern bench requires harder data than that. Social science establishes new standards for what it is that can be taken as "self-evident," what, to use the words of the Court, "common observation would seem to support." This of course is a special problem for the Supreme Court. One cannot imagine that the bloopers of *Tilton* would have survived review—but with the Supreme Court there is no review.

Consider the second assertion, that "there is substance to the contention that college students are less impressionable and less susceptible to religious indoctrination." The Court again offers in evidence a *Harvard Law Review* article, this by Professor Donald A. Giannella. Again the tautology: Church-related colleges, Giannella writes, do not "attempt to form the religious character of the student by maintaining a highly controlled regime . . . to attempt such control of the college students is highly inappropriate, and would probably prove self-defeating." Again, no evidence, no data.

This kind of assertion by the Court is bound to be challenged. Anyone with any experience of a liberal-arts faculty would immediately suspect that psychologists would not have any reliable findings on a subject so vast as "impressionability to religious indoctrination." This almost surely would come under the heading of things researchable but not researched. The methodological problems, especially of definition, are clearly formidable.

And, indeed, in response to an enquiry which I sent, the 1978 President of the American Psychological Association, Professor M. Brewster Smith of the University of California, replied:

> There is no comparable comprehensive treatment of religious change over the high school years that I know of, and while surely a close

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search might turn up scattered studies, I think it is fair to say, in answer to your question, that solid evidence regarding the high school vs. college comparison in which you are interested *does not exist* (his italics).

Inasmuch as I have called the *Tilton* case into question in the course of Senate debate, allow me to be particularly explicit as to what I judge the Court to have done in this case. The Court's confidence in what some might call its "secularist" position on the establishment clause has declined steadily since it first pronounced on the matter in *Everson* in 1947. In *Tilton* it was trying to find grounds for allowing a clear intent of Congress to be carried out, and did so by distinguishing between higher-education facilities, which are the only ones affected by the law, and other facilities. But the point I would wish to make, for purposes of this essay, is that the Court, in an effort to base its decision on contemporary modes of argument, was rigorous but not rigorous enough. On examination, there is no evidence with which to support its finding. Justice Douglas, arguing in a prescientific mode, made no such mistake.

A great wisdom

Is this distressing? Not, I think, unless one is distressed by the modern age. Primitive man, presumedly, had an explanation for everything. There is a sense, of course, in which science has made ignoramuses of us all. So much is *not* known. But modern man still does know more than his ancestors, even immediate ones, and we would do well to recall the saying of 19th-century Americans that "it's not ignorance that hurts, it's knowin' all those things that ain't so." Courts will learn to adapt to the changed conditions of evidence which social science imposes on contemporary argument. One would not be surprised, for example, to see the emergence of a group of lawyers trained in both disciplines, much as there are now specialists trained both as lawyers and as medical doctors. Indeed, lawyers with no more than a good undergraduate grounding in social-science methodology could have quite an impact in this area simply by establishing standards of cross-examination which are infrequently attained today.

This would be no small thing. To take yet another, and now concluding example from the field of education: Consider the controversy which broke out in the late 1970's over reinterpretations of the Equal Educational Opportunity Report, commonly known as the Coleman Report after its principal author, Professor James S. Cole-

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man. In the late 1960's Coleman's data on pupil achievement were the basis for a number of major court decisions calling for school busing. Subsequently—in the familiar pattern—his initial interpretations were challenged. Much confusion and some bitterness followed. It is at least arguable that much of this might have been avoided had it been made clear to the courts, in the first place, either through exposition by plaintiffs or cross-examination by defendants, that Coleman had not found any race effect as such in his analysis of student-body characteristics and educational achievement. He had found a social-class effect.

Judges in the future should be able to look for such cross-examination. This will help them protect the special space that we give to the courts, for if there is one thing they don't need, it is another group of critics, claiming to know their tasks better than they.

One hopes it does not transgress any boundaries to suggest that these developments might also encourage in the courts a somewhat more easeful acceptance that, in the end, law is after all only long-established preference, codified opinion. When Pound and Cardozo and Holmes began talking of the "science of law," perhaps they, too, were mostly trying to impose a different set of opinions from those then prevailing. But at least they were doing so in an effort to get the bench back to the business of interpreting opinion as *embodied in legislation,* rather than as embodied in the education and social-class preferences of a particular body of judges. This was great wisdom, and this is precisely the import of Chief Justice Burger's decision in *Tennessee Valley Authority v. Hill* (1978) in which it was held that, inasmuch as the Tellico Dam would endanger the snail darter, it was prohibited by the Endangered Species Act. In civil but firm tones the Congress was informed that it must expect that, when called upon, the Court will enforce such laws as Congress enacts regardless of any individual appraisal of the wisdom or unwisdom of a particular course. Whether that was to be considered a warning or not will depend on one's judgment as to the balance of wisdom against unwisdom in recent Congressional enactments. But that it is the policy of the present Court, none need doubt. We may all take pleasure in the nice touch of the Chief Justice who closed his opinion not with a citation of social science, nor yet of any "science of law," but rather lines ascribed to Sir Thomas More by the contemporary playwright Robert Bolt: "The law, Roper, the law. I know what's legal, not what's right. And I'll stick to what's legal . . . I'm *not* God."

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"Making babies" revisited

LEON R. KASS

> And the man knew not Eve his wife; but she conceived without him and bore Cain, and said: I have gotten a man with the help of Dr. Steptoe. *Ectogenesis IV*, 1
>
> And Isaac entreated the NIH for his wife, because she was barren; and the NIH let Itself be entreated of him, and Rebekah his wife conceived. *Ectogenesis XXV*, 21

SEVEN years ago in the pages of this journal, in an article entitled "Making Babies—the New Biology and the 'Old' Morality" (Number 26, Winter 1972), I explored some of the moral and political questions raised by projected new powers to intervene in the processes of human reproduction. I concluded that it would be foolish to acquire and use these powers. The questions have since been debated in "bioethical" circles and in college classrooms, and they have received intermittent attention in the popular press and in sensational novels and movies. This past year they have gained the media limelight with the Del Zio suit against Columbia University, and more especially with the birth last summer in Britain of Louise Brown, the first identified human baby born following conception in the laboratory.

Back in 1975, after prolonged deliberations, the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research issued its report and recommendations for research on the human fetus. And in the *Federal Register* of August 8,

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1975, the Secretary of Health, Education, and Welfare published regulations regarding research, development, and related activities involving fetuses, pregnant women, and *in vitro* fertilization. These provided that no Federal monies should be used for *in vitro* fertilization of human eggs until a special Ethics Advisory Board reviews the special ethical issues and offers advice about whether government should support any such proposed research. There has been an effective moratorium on Federal support for human *in vitro* fertilization research since that time. But now the whole matter has once again become the subject of an intensive policy debate, for such a board has been established by HEW to consider whether the United States Government should finance research on human *in vitro* fertilization and embryo transfer.

The question has been placed on the policy table by a research proposal submitted to the National Institute of Child Health and Human Development by Dr. Pierre Soupart of Vanderbilt University. Dr. Soupart requested $465,000, over three years, for a study to define in part the genetic risk involved in obtaining early human embryos by tissue-culture methods. He proposes to fertilize about 450 human ova, obtained from donors undergoing gynecological surgery (i.e., not from women whom the research could be expected to help), with donor sperm, to observe their development for five to six days, and to examine them microscopically for chromosomal and other abnormalities before discarding them. In addition, Dr. Soupart proposes to study whether such laboratory-grown embryos can be frozen and stored without producing abnormalities; it is thought that temporary cold storage of human embryos might improve the success rate in the embryo-transfer procedure used to produce a child. Though Dr. Soupart does not now propose to do embryo transfers to women seeking to become pregnant, his research is intended to serve that goal: He seeks to reassure us that baby-making with the help of *in vitro* fertilization is safe; and he seeks to perfect the techniques introduced by Drs. Edwards and Steptoe in England.

Dr. Soupart's application was approved for funding by the National Institutes of Health review process in October 1977, but because of the administrative regulations it could not be funded without review by an Ethics Advisory Board. The Secretary of HEW, Joseph Califano, has constituted the 13-member Board, and charged it, not only with a decision on the Soupart proposal, but with an inquiry into all the scientific, ethical, and legal issues involved, urging it "to provide recommendations on broad principles to guide

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the Department in future decision making." The Board, comprising a distinguished group of physicians, academics, and laymen, has invited expert and public testimony on the widest range of questions. By the end of the first phase of its work, it will have held at least 11 meetings and public hearings all over the United States, offering all interested citizens or groups the chance to express their opinions.

I was asked by the Board to discuss the ethical issues raised by the proposed research on human *in vitro* fertilization, laboratory cultures of—and experimentation with—human embryos, and the intra-uterine transfer of such embryos for the purpose of assisting human generation. In addition, I was asked to comment on the appropriateness of Federal funding of such research and on the implications of this work for the provision of health care. The present article is based largely on testimony given before the Ethics Advisory Board, at its Boston meeting, October 13-14, 1978.

II

How should one think about the ethical issues, here and in general? There are many possible ways, and it is not altogether clear which way is best. For some people ethical issues are immediately matters of right and wrong, of purity and sin, of good and evil. For others, the critical terms are benefits and harms, risks and promises, gains and costs. Some will focus on so-called rights of individuals or groups, e.g., a right to life or childbirth; still others will emphasize so-called goods for society and its members, such as the advancement of knowledge and the prevention and cure of disease.

My own orientation here is somewhat different. I wish to suggest that before deciding what to do, one should try to understand the implications of doing or not doing. The first task, it seems to me, is not to ask "moral or immoral?" "right or wrong?" but to try to understand fully the meaning and significance of the proposed actions.

This concern with significance leads me to take a broad view of the matter. For we are concerned here not only with the proposed research of Dr. Soupart, and the narrow issues of safety and informed consent it immediately raises, but also with a whole range of implications including many that are tied to definitely foreseeable consequences of this research and its predictable extensions—and touching even our common conception of our own humanity. The very establishment of a special Ethics Advisory Board testifies that we are at least tacitly aware that more is at stake than in ordinary

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biomedical research, or in experimenting with human subjects at risk of bodily harm. At stake is the *idea* of the *humanness* of our human life and the meaning of our embodiment, our sexual being, and our relation to ancestors and descendants. In reaching the necessarily particular and immediate decision in the case at hand, we must be mindful of the larger picture and must avoid the great danger of trivializing this matter for the sake of rendering it manageable.

III

What is the status of a fertilized human egg (i.e., a human zygote) and the embryo that develops from it? How are we to regard its being? How are we to regard it morally, i.e., how are we to behave toward it? These are, alas, all-too-familiar questions. At least analogous, if not identical, questions are central to the abortion controversy and are also crucial in considering whether and what sort of experimentation is properly conducted on living but aborted fetuses. Would that it were possible to say that the matter is simple and obvious, and that it has been resolved to everyone's satisfaction!

But the controversy about the morality of abortion continues to rage and divide our nation. Moreover, many who favor or do not oppose abortion do so despite the fact that they regard the pre-viable fetus as a living human organism, even if less worthy of protection than a woman's desire not to give it birth. Almost everyone senses the importance of this matter of the decision about laboratory culture of, and experimentation with, human embryos. Thus, we are obliged to take up the question of the status of the embryos, in a search for the outlines of some common ground on which many of us can stand. To the best of my knowledge, the discussion which follows is not informed by any particular sectarian or religious teaching, though it may perhaps reveal that I am a person not devoid of reverence and the capacity for awe and wonder, said by some to be the core of the "religious" sentiment.

I begin by noting that the circumstances of laboratory-grown blastocysts (i.e., 3-to-6-day-old embryos) and embryos are not identical with those of the analogous cases of 1) living fetuses facing abortion and 2) living aborted fetuses used in research. First, the fetuses whose fates are at issue in abortion are unwanted, usually the result of "accidental" conception. Here, the embryos are wanted, and deliberately created, despite certain knowledge

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that many of them will be destroyed or discarded.[1] Moreover, the fate of these embryos is not in conflict with the wishes, interests, or alleged rights of the pregnant women. Second, though the HEW guidelines governing fetal research permit studies conducted on the not-at-all-viable aborted fetus, such research merely takes advantage of available "products" of abortions not themselves undertaken for the sake of the research. No one has proposed and no one would sanction the deliberate production of live fetuses to be aborted for the sake of research, even very beneficial research.[2] In contrast, we are here considering the deliberate production of embryos for the express purpose of experimentation.

The cases may also differ in other ways. Given the present state of the art, the largest embryo under discussion is the blastocyst, a spherical, relatively undifferentiated mass of cells, barely visible to the naked eye. In appearance it does not look human; indeed, only the most careful scrutiny by the most experienced scientist might distinguish it from similar blastocysts of other mammals. If the human zygote and blastocyst are more like the animal zygote and blastocyst than they are like the 12-week-old human fetus (which already has a humanoid appearance, differentiated organs, and electrical activity of the brain), then there would be a much-diminished ethical dilemma regarding their deliberate creation and experimental use. Needless to say, there are articulate and passionate defenders of all points of view. Let us try, however, to consider the matter afresh.

First of all, the zygote and early embryonic stages are clearly alive. They metabolize, respire, and respond to changes in the environment; they grow and divide. Second, though not yet organized into distinctive parts or organs, the blastocyst is an organic whole, self-developing, genetically unique and distinct from the egg and sperm whose union marked the beginning of its career as a discrete, unfolding being. While the egg and sperm are alive as cells, something new and alive *in a different sense* comes into being with fertilization. The truth of this is unaffected by the fact that fertiliza-

[1] In the British procedures, several eggs are taken from each woman and fertilized, to increase the chance of success, but only one embryo is transferred for implantation. In Dr. Soupart's proposed experiments, as the embryos will be produced only for the purpose of research and not for transfer, all of them will be discarded or destroyed.

[2] A perhaps justifiable exception would be the case of a universal plague on childbirth, say because of some epidemic that fatally attacks all fetuses *in utero* at age 5 months. Faced with the prospect of the end of the race, might we not condone the deliberate institution of pregnancies to provide fetuses for research, in the hope of finding a diagnosis and remedy for this catastrophic blight?

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tion takes time and is not an instantaneous event. For after fertilization is *complete*, there exists a new individual, with its unique genetic identity, fully potent for the self-initiated development into a mature human being, if circumstances are cooperative. Though there is some sense in which the lives of egg and sperm are continuous with the life of the new organism-to-be (or, in human terms, that the parents live on in the child or child-to-be), in the decisive sense there is a discontinuity, a new beginning, with fertilization. *After* fertilization, there is continuity of subsequent development, even if the locus of the embryo alters with implantation (or birth). Any honest biologist must be impressed by these facts, and must be inclined, at least on first glance, to the view that a human life begins at fertilization. Even Dr. Robert Edwards has apparently stumbled over this truth, perhaps inadvertently, in the remark about Louise Brown attributed to him in an article by Peter Gwynne in *Science Digest*: "The last time I saw *her, she* was just eight cells in a test-tube. *She* was beautiful *then,* and she's still beautiful *now*!" [3]

But granting that a human life begins at fertilization, and comes-to-be via a continuous process thereafter, surely—one might say—the blastocyst itself is hardly a human being. I myself would agree that a blastocyst is not, in a *full* sense, a human being—or what the current fashion calls, rather arbitrarily and without clear definition, a person. It does not look like a human being nor can it do very much of what human beings do. Yet, at the same time, I must acknowledge that the human blastocyst is 1) human in origin and 2) *potentially* a mature human being, if all goes well. This too is beyond dispute; indeed it is precisely because of its peculiarly human potentialities that people propose to study *it* rather than the embryos of other mammals. The human blastocyst, even the human blastocyst *in vitro,* is not humanly nothing; it possesses a power to become what everyone will agree is a human being.

Here it may be objected that the blastocyst *in vitro* has today no such power, because there is now no way *in vitro* to bring the blastocyst to that much later fetal stage at which it might survive on its own. There are no published reports of culture of human embryos past the blastocyst stage (though this has been reported for mice). The *in vitro* blastocyst, like the 12-week-old aborted fetus, is *in this sense* not viable (i.e., it is at a stage of maturation before the stage of possible independent existence). But if we dis-

[3] Peter Gwynne, "Was the Birth of Louise Brown Only a Happy Accident?" *Science Digest,* October 1978, (emphasis added).

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tinguish, among the *not*-viable embryos, between the *pre*-viable and the *not-at-all* viable—on the basis that the former, though not yet viable is capable of *becoming* or *being made* viable[4]—we note a crucial difference between the blastocyst and the 12-week abortus. Unlike an aborted fetus, the blastocyst is possibly salvageable, and hence *potentially* viable *if it is transferred to a woman for implantation.* It is not strictly true that the *in vitro* blastocyst is *necessarily* not-viable. Until proven otherwise, by embryo transfer and attempted implantation, we are right to consider the human blastocyst *in vitro* as potentially a human being and, in this respect, not fundamentally different from a blastocyst *in utero.* To put the matter more forcefully, the blastocyst *in vitro* is *more* "viable," in the sense of more salvageable, than aborted fetuses at most later stages, up to say 20 weeks.

This is not to say that such a blastocyst is therefore endowed with a so-called right to life, that failure to implant it is negligent homicide, or that experimental touchings of such blastocysts constitute assault and battery. (I myself tend to reject such claims, and indeed think that the ethical questions are not best posed in terms of "rights.") But the blastocyst is not nothing; it is *at least* potential humanity, and as such it elicits, or ought to elicit, our feelings of awe and respect. In the blastocyst, even in the zygote, we face a mysterious and awesome power, a power governed by an immanent plan that may produce an indisputably and fully human being. It deserves our respect not because it has rights or claims or sentience (which it does not have at this stage), but because of what it is, now *and* prospectively.

Let us test this provisional conclusion by considering intuitively our response to two possible fates of such zygotes, blastocysts, and early embryos. First, should such an embryo die, will we be inclined to mourn its passing? When a woman we know miscarries, we are sad—largely for *her* loss and disappointment, but perhaps also at the premature death of a life that might have been. But we do not mourn the departed fetus, nor do we seek ritually to dispose of the remains. In this respect, we do not treat even the fetus as fully one of us.

On the other hand, we would I suppose recoil even from the

[4] For the supporting analysis of the concept of "viability," see my article, "Determining Death and Viability in Fetuses and Abortuses," prepared for the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research, published in *Appendix: Research on the Fetus,* U. S. Department of Health, Education, and Welfare, HEW Publ. No. (OS) 76-128, 1975.

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thought, let alone the practice—I apologize for forcing it upon the reader—of eating such embryos, should someone discover that they would provide a great delicacy, a "human caviar." The human blastocyst would be protected by our taboo against cannibalism, which insists on the humanness of human flesh and which does not permit us to treat even the flesh of the dead as if it were mere meat. *The human embryo is not mere meat; it is not just stuff; it is not a thing.*[5] Because of its origin and because of its capacity, it commands a higher respect.

How much more respect? As much as for a fully developed human being? My own inclination is to say "probably not," but who can be certain? Indeed, there might be prudential and reasonable grounds for an affirmative answer, partly because the presumption of ignorance ought to err in the direction of never underestimating the basis for respect of human life, partly because so many people feel very strongly that even the blastocyst is protectably human. As a first approximation, I would analogize the early embryo *in vitro* to the early embryo *in utero* (because both are potentially viable and human). On this ground alone, *the most sensible policy is to treat the early embryo as a pre-viable fetus, with constraints imposed on early embryo research at least as great as those on fetal research.*

To some this may seem excessively scrupulous. They will argue for the importance of the absence of distinctive humanoid appearance or the absence of sentience. To be sure, we would feel more restraint in invasive procedures conducted on a five-month-old or even 12-week-old living fetus than on a blastocyst. But this added restraint on inflicting suffering on a "look-alike," feeling creature in no way denies the propriety of a prior restraint, grounded in respect for individuated, living, potential humanity. Before I would be persuaded to treat early embryos differently from later ones, I would insist on the establishment of a reasonably clear, naturally grounded boundary that separates "early" and "late," and which provides the basis for respecting "the early" less than "the late." This burden *must* be accepted by proponents of experimentation

[5] Some people have suggested that the embryo be regarded like a vital organ, salvaged from a newly dead corpse, usable for transplantation or research, and that its donation by egg and sperm donors be governed by the Uniform Anatomical Gift Act, which legitimates pre-mortem consent for organ donation upon death. But though this acknowledges that embryos are not things, it is mistaken in treating embryos as mere organs, thereby overlooking that they are early stages of a *complete, whole* human being. The Uniform Anatomical Gift Act does not apply to, nor should it be stretched to cover, donation of gonads, gametes (male sperm or female eggs), or—especially—zygotes and embryos.

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with human embryos *in vitro* if a decision to permit creating embryos for such experimentation is to be treated as ethically responsible.

IV

Where does the above analysis lead in thinking about treatment of *in vitro* human embryos? I shall indicate, very briefly, the lines toward a possible policy, though that is not my major intent.

The *in vitro* fertilized embryo has four possible fates: 1) *implantation,* in the hope of producing from it a child; 2) *death,* by active "killing" or disaggregation, or by a "natural" demise; 3) use in *manipulative experimentation*—embryological, genetic, etc.; 4) use in attempts at *perpetuation in vitro* beyond the blastocyst stage, ultimately, perhaps, to viability. I will not now consider this fourth and future possibility, though I would suggest that full laboratory growth of an embryo into a viable human being (i.e., ectogenesis), while perfectly compatible with respect owed to its potential humanity as an individual, may be incompatible with the kind of respect owed to its humanity that is grounded in the bonds of lineage and the nature of parenthood.

On the strength of my analysis of the status of the embryo, and the respect due it, no objection would be raised to implantation. *In vitro* fertilization and embryo transfer to treat infertility, as in the case of Mr. and Mrs. Brown, is perfectly compatible with a respect and reverence for human life, including potential human life. Moreover, no disrespect is intended or practiced by the mere fact that several eggs are removed for fertilization, to increase the chance of success. Were it possible to guarantee successful fertilization and normal growth with a single egg, no more would need to be obtained. Assuming nothing further is done with the unimplanted embryos, there is nothing disrespectful going on. The demise of the unimplanted embryos would be analogous to the loss of numerous embryos wasted in the normal *in vivo* attempts to generate a child. It is estimated that over 50 percent of eggs successfully fertilized during unprotected sexual intercourse fail to implant, or do not remain implanted, in the uterine wall, and are shed soon thereafter, before a diagnosis of pregnancy could be made. Any couple attempting to conceive a child tacitly accepts such embryonic wastage as the perfectly acceptable price to be paid for the birth of a (usually) healthy child. Current procedures to initiate pregnancy with laboratory fertilization thus differ from the natural "procedure"

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in that what would normally be spread over four or five months *in vivo* is compressed into a single effort, using all at once a four or five months' supply of eggs.[6]

Parenthetically, we should note that the natural occurrence of embryo and fetal loss and wastage does not necessarily or automatically justify all deliberate, humanly caused destruction of fetal life. For example, the natural loss of embryos in early pregnancy cannot in itself be a warrant for deliberately aborting them or for invasively experimenting on them *in vitro*, any more than stillbirths could be a justification for newborn infanticide. There are many things that happen naturally that we ought not to do deliberately. It is curious how the same people who deny the relevance of nature as a guide for evaluating human interventions into human generation, and who deny that the term "unnatural" carries any ethical weight, will themselves appeal to "nature's way" when it suits their purposes.[7] Still, in this present matter, the closeness to natural procreation—the goal is the same, the embryonic loss is unavoidable and not desired, and the amount of loss is similar—leads me to believe that we do no more intentional or unjustified harm in the one case than in the other, and practice no disrespect.

But must we allow *in vitro* unimplanted embryos to die? Why should they not be either transferred for "adoption" into another infertile woman, or else used for investigative purposes, to seek new knowledge, say about gene action? The first option raises questions about the nature of parenthood and lineage to which I will return. But even on first glance, it would seem likely to raise a large objec-

[6] There is a good chance that the problem of surplus embryos may be avoidable, for purely technical reasons. Some researchers believe that the uterine receptivity to the transferred embryo might be reduced during the particular menstrual cycle in which the ova are obtained, because of the effects of the hormones given to induce superovulation. They propose that the harvested *eggs* be frozen, and then defrosted one at a time each month for fertilization, culture, and transfer, until pregnancy is achieved. By refusing to fertilize all the eggs at once—i.e., not placing all one's eggs in one uterine cycle—there will not be surplus *embryos*, but at most only surplus eggs. This change in the procedure would make the demise of unimplanted embryos *exactly* analogous to the "natural" embryonic loss in ordinary reproduction.

[7] The literature on intervention in reproduction is both confused and confusing on the crucial matter of the meanings of "nature" or "the natural," and their significance for the ethical issues. It may be as much a mistake to claim that "the natural" has *no* moral force as to suggest that the natural way is best, because natural. Though shallow and slippery thought about nature, and its relation to "good," is a likely source of these confusions, the nature of nature may itself be elusive, making it difficult for even careful thought to capture what is natural.

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tion from the original couple, who were seeking a child of their own and not the dissemination of their "own" biological children for prenatal adoption.

But what about experimentation on such blastocysts and early embryos? Is that compatible with the respect they deserve? This is the hard question. On balance, I would think not. Invasive and manipulative experiments involving such embryos very likely presume that they are things or mere stuff, and deny the fact of their possible viability. Certain observational and non-invasive experiments might be different. But on the whole, I would think that the respect for human embryos for which I have argued—I repeat, not their so-called right to life—would lead one to oppose most potentially interesting and useful experimentation. This is a dilemma, but one which cannot be ducked or defined away. Either we accept certain great restrictions on the permissible uses of human embryos or we deliberately decide to override—though I hope not deny—the respect due to the embryos.

I am aware that I have pointed toward a seemingly paradoxical conclusion about the treatment of the unimplanted embryos: Leave them alone, and do not create embryos for experimentation only. To let them die "naturally" would be the most respectful course, grounded on a reverence, generically, for their potential humanity, and a respect, individually, for their being the seed and offspring of a particular couple who were themselves seeking only to have a child of their own. An analysis which stressed a "right to life," rather than respect, would of course lead to different conclusions. Only an analysis of the status of the embryo which denied both its so-called "rights" *or* its worthiness of all respect would have no trouble sanctioning its use in investigative research, donation to other couples, commercial transactions, and other activities of these sorts.

V

The attempt to generate a child with the aid of *in vitro* fertilization constitutes an experiment upon the prospective child. As yet, we have no knowledge of the range of such risks. It thus raises a most peculiar question for the ethics of human experimentation: Can one ethically choose for a yet hypothetical, unconceived child-to-be the unknown hazards he must face, obviously without his consent, and simultaneously choose to give him life in which to face them? This question has been much debated, as it points to a seri-

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ous and immediate ethical concern: the hazards of manipulating the embryo as it bears on the health of the child-to-be.

Everyone agrees that human-embryo transfer for the sake of generation should not be performed until prior laboratory research in animals has provided a sound basis for estimating the likely risks to any human beings who will be born as a result of this transfer and gestation. Argument centers on whether a sufficiently sound basis for estimating the likely risks to humans *can be* provided by animal experiments, and, if so, whether adequate experimentation has been done, and what level of risk is acceptable.

There is, it seems to me, good reason for insisting that risk of incidence and likely extent of possible harm be very, very low—lower, say, than in therapeutic experimentation in children or adults. But I do not think that the risk of harm must be positively excluded (and it certainly cannot be). It would suffice if those risks were equivalent to, or less than, the risks to the child from normal procreation. To insist on more rigorous standards, especially when we permit known carriers of genetic disease to reproduce, would seem a denial of equal treatment to infertile couples contemplating *in vitro* assistance. Moreover, it is to give undue weight to the importance of bodily harm over against risks of poor nurture and rearing after birth. Wouldn't the couple's great eagerness for the child count, in the promise of increased parental affection, toward offsetting even a slightly higher but unknown risk of mental retardation?

Finally, to insist on extra-scrupulosity regarding risks in laboratory-assisted reproduction is to attach too much of one's concern to the wrong issue. True, everyone understands about harming children, while very few worry about dehumanization of procreation or problems of lineage. But those are the things that are distinctive about laboratory-assisted reproduction, not the risk of bodily harm to offspring. It should suffice that the risks be comparable to those for ordinary procreation, not greater but no less.

It remains a question whether we now know enough about these risks to go ahead with human-embryo transfer. Here I would defer to the opinions of the cautious experts—for caution is the posture of responsibility toward such prospective children. I would agree with Doctors Luigi Mastroianni, Benjamin Brackett, and Robert Short—all researchers in the field—that the risks for humans have not yet been sufficiently assessed, in large part because the risks in animals have been so poorly assessed (due to the small numbers of such births and to the absence of any *prospective* study to identify and evaluate deviations from the norm).

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VI

Many people rejoiced at the birth of Louise Brown. Some were pleased by the technical accomplishment, many were pleased that she was born apparently in good health. But most of us shared the joy of her parents, who after a long, frustrating, and fruitless period, at last had the pleasure and blessing of a child of their own. The desire to have a child of one's own is acknowledged to be a powerful and deep-seated human desire—some have called it "instinctive"—and the satisfaction of this desire, by the relief of infertility, is said to be one major goal of continuing the work with *in vitro* fertilization and embryo transfer. That this is a worthy goal few, if any, would deny.

Yet let us explore what is meant by "*to have a child of one's own.*" First, what is meant by "to *have*"? Is the crucial meaning that of gestating and bearing? Or is it "to have" as a possession? Or is it to nourish and to rear, the child being the embodiment of one's activity as teacher and guide? Or is it rather to provide someone who descends and comes after, someone who will replace oneself in the family line or preserve the family tree by new sproutings and branchings?

More significantly, what is meant by "*one's own*"? What sense of one's own is important? A scientist might define "one's own" in terms of carrying one's own genes. Though in some sense correct, this cannot be humanly decisive. For Mr. Brown or for most of us, it would not be a matter of indifference if the sperm used to fertilize the egg were provided by an identical twin brother—whose genes would be, of course, the same as his. Rather, the humanly crucial sense of "one's own," the sense that leads most people to choose their own, rather than to adopt, is captured in such phrases as "my seed," "flesh of my flesh," "sprung from my loins." More accurately, since "one's own" is not the own of one but of *two*, the desire to have a child of "one's own" is *a couple's desire* to embody, out of the conjugal union of their separate bodies, a child who is flesh of their separate flesh made one. This archaic language may sound quaint, but I would argue that this is precisely what is being celebrated by most people who rejoice at the birth of Louise Brown, whether they would articulate it this way or not. Mr. and Mrs. Brown, by the birth of their daughter, fulfill this aspect of their separate sexual natures and of their married life together, they acquire descendants and a new branch of their joined family tree, and the child Louise is given solid and unambiguous roots from which she has sprung and by which she will be nourished.

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If this were to be the *only* use made of embryo transfer, and if providing *in this sense* "a child of one's own" were indeed the sole reason for the clinical use of the techniques, there could be no objection. Yet there will almost certainly be other uses, involving third parties, to satisfy the desire "to have" a child of "one's own" in different senses of "to have" and "one's own." I am not merely speculating about future possibilities. With the technology to effect human *in vitro* fertilization and embryo transfer comes the *immediate* possibility of egg donation (egg from donor, sperm from husband), embryo donation (egg and sperm from outside of the marriage), and foster pregnancy (host surrogate for gestation).

Nearly everyone agrees that these circumstances are morally and perhaps psychologically more complicated than the intra-marital case. Here the meaning of "one's own" is no longer so unambiguous; neither is the meaning of motherhood and the status of pregnancy. On the one hand, it is argued that embryo donation, or "prenatal adoption," would be superior to present adoption, because the woman would have the experience of pregnancy and the child would be born of the "adopting" mother, rendering the maternal tie even more close. On the other hand, the mother-child bond rooted in pregnancy and delivery is held to be of little consequence by those who would endorse the use of surrogate gestational "mothers," say for a woman whose infertility is due to uterine disease rather than ovarian disease or oviduct obstruction. Clearly, the "need" and demand for extra-marital embryo transfer are real and probably large, probably even greater than the intra-marital ones. Already, the Chairman of the Ethics Advisory Board has testified in Congress about the need to define the responsibilities of *the donor* and the recipient "parents." Thus the new techniques will not only serve to ensure and preserve lineage, but will also serve to confound and complicate it. The principle truly at work here is not to provide married couples with a child of *their own,* but to provide anyone who wants one with a child, by whatever possible or convenient means.

"So what?" it will be said. First of all, we already practice and encourage adoption. Second, we have permitted artificial insemination—though we have, after some 40 years of this practice, yet to resolve questions of legitimacy. Third, what with the high rate of divorce and remarriage, identification of "mother," "father," and "child" are already complicated. Fourth, there is a growing rate of illegitimacy and husbandless parentages. Fifth, the use of surrogate mothers for foster pregnancy has already occurred, with the aid of

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artificial insemination.[8] Finally, our age in its enlightenment is no longer so certain about the virtues of family, lineage, and heterosexuality, or even about the taboos against adultery and incest. Against this background, it will be asked, why all the fuss about some little embryos that stray from the nest?

It is not an easy question to answer. Yet, consider. We practice adoption because there are abandoned children who need a good home. We do not, and would not, encourage people deliberately to generate children for others to adopt; partly we wish to avoid baby markets, partly we think it unfair to the child deliberately to deprive him of his natural ties. Recent years have seen a rise in our concern with roots, against the rootless and increasingly homogeneous background of contemporary American life. Adopted children, in particular, are pressing for information regarding their "real parents," and some states now require that such information be made available (on that typically modern ground of "freedom of information," rather than because of the profound importance of lineage for self-identity). The practice of artificial insemination has yet to be evaluated, the secrecy in which it is practiced being an apparent concession to the dangers of publicity.[9] Indeed, most physicians who practice artificial insemination routinely mix in some semen from the husband, to preserve some doubt about paternity—again, a concession to the importance of lineage and legitimacy. Finally, what about the changing mores of marriage, divorce, single-parent families, and sexual behavior? Do we applaud these changes? Do we want to

[8] An unmarried woman in Dearborn, Michigan, offered to bear a child for her married friend, infertile because of a hysterectomy. She was impregnated by artificial insemination using semen produced by her friend's husband, his wife performing the injection. The threesome lived together all during the pregnancy. The child was delivered at birth by the biological-and-gestational-mother to the wife-and-rearing-mother. The first (pregnancy) mother reports no feelings of attachment to the child she carried and bore. Everyone is reportedly delighted with the event. The trio has publicized its accomplishment and is reported to be considering selling rights to the story for a TV show, a book, and a movie. Their attorney has been swamped with letters requesting similar surrogate "mothers." (*American Medical News*, July 28, 1978, pp. 11-12.)

[9] There are today numerous suits pending, throughout the United States, because of artificial insemination with donor semen (AID). Following divorce, the ex-husbands are refusing child support for AID children, claiming, minimally, no paternity, or maximally that the child was the fruit of an adulterous "union." In fact, a few states still treat AID as adultery. The importance of anonymity is revealed in the following bizarre case. A woman wanted to have a child, but abhorred the thought of marriage or of sexual relations with men. She learned a do-it-yourself technique of artificial insemination, and persuaded a male acquaintance to donate his semen. Now some 10 years after this virgin birth, the case has gone to court. The semen donor is suing for visitation privileges, to see his son.

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contribute further to the confusion of thought, identity, and practice?[10]

Properly understood, the largely universal taboos against incest, and also the prohibition against adultery, suggest that clarity about who your parents are, clarity in the lines of generation, clarity about who is whose, are the indispensable foundations of a sound family life, itself the sound foundation of civilized community. Clarity about your origins is crucial for self-identity, itself important for self-respect. It would be, in my view, deplorable public policy further to erode such fundamental beliefs, values, institutions, and practices. This means, concretely, no encouragement of embryo adoption or especially of surrogate pregnancy. While it would be perhaps foolish to try to proscribe or outlaw such practices, it would not be wise for the Federal government to foster them. The Ethics Advisory Board should carefully consider whether it should and can attempt to restrict the use of embryo transfer to the married couple from whom the embryo derives.

The case of surrogate wombs bears a further comment. While expressing no objection to the practice of foster pregnancy itself, some people object that it will be done for pay, largely because of their fear that poor women will be exploited by such a practice. But if there were nothing wrong with foster pregnancy, what would be wrong with making a living at it? Clearly, this objection harbors a *tacit* understanding that to bear another's child for pay is in some sense a degradation of oneself—in the same sense that prostitution is a degradation *primarily* because it entails the loveless surrender of one's body to serve another's lust, and *only derivatively* because the woman is paid. It is to deny the meaning and worth of one's body, to treat it as a mere incubator, divested of its human meaning. It is also to deny the meaning of the bond among sexuality, love, and procreation. The buying and selling of human flesh and the dehumanized uses of the human body ought not to be encouraged. To be sure, the practice of womb donation could be engaged in for love not money, as it apparently has been in the case in Michigan. A woman could bear her sister's child out of sisterly love. But to the degree that one escapes in this way from the degradation and difficulties of the *sale* of human flesh and bodily services, and the

[10] To those who point out that the bond between sexuality and procreation has already been effectively and permanently cleaved by "the pill," and that this is therefore an idle worry in the case of *in vitro* fertilization, it must be said that the pill provides only sex without babies. Now the other shoe drops: babies without sex.

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treating of the body as stuff (the problem of cannibalism), one approaches instead the difficulties of potential incest and near-incest.

VII

Objections have been raised about the deliberate technological intervention into the so-called natural processes of human reproduction. Some would simply oppose such interventions as "unnatural," and therefore wrong. Others are concerned about the consequences of these interventions, and about their ends and limits. Again, I think it important to explore the meaning and possible significance of such interventions, present and projected, especially as they bear on fundamental beliefs, institutions, and practices. To do so requires that we consider likely future developments in the laboratory study of human reproduction. Indeed, I shall argue that we *must* consider such future developments in reaching a decision in the present case.

What can we expect in the way of new modes of reproduction, as an outgrowth of present studies? To be sure, prediction is difficult. One can never know with certainty what will happen, much less how soon. Yet uncertainty is not the same as simple ignorance. Some things, indeed, seem likely. They seem likely because 1) they are thought necessary or desirable, at least by some researchers and their sponsors, 2) they are probably biologically possible and technically feasible, and 3) they will be difficult to prevent or control (especially if no one anticipates their development or sees a need to worry about them). One of the things the citizenry, myself included, would expect from an Ethics Advisory Board and our policy makers generally is that they face up to reasonable projections of future accomplishments, consider whether they are cause for social concern, and see whether or not the principles *now* enunciated and the practices *now* established are adequate to deal with any such concerns.

I project at least the following:

1. The growth of human embryos in the laboratory will be extended beyond the blastocyst stage. Such growth must be deemed desirable under all the arguments advanced for developmental research *up to* the blastocyst stage; research on gene action, chromosome segregation, cellular and organic differentiation, fetus-environment interaction, implantation, etc., cannot answer all its questions with the blastocyst. Such *in vitro* post-blastocyst differentiation has apparently been achieved in the mouse, in culture; the use of other mammals as temporary hosts for human embryos is also a possibility. How far such embryos will eventually be perpetuated is anybody's

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guess, but full-term ectogenesis cannot be excluded. Neither can the existence of laboratories filled with many living human embryos, growing at various stages of development.

2. Experiments will be undertaken to alter the cellular and genetic composition of these embryos, at first without subsequent transfer to a woman for gestation, perhaps later as a prelude to reproductive efforts. Again, scientific reasons now justifying Dr. Soupart's research already justify further embryonic manipulations, including formation of hybrids or chimeras (within species and between species); gene, chromosome, and plasmid insertion, excision, or alteration; nuclear transplantation or cloning, etc. The techniques of DNA recombination, coupled with the new skills of handling embryos, make prospects for some precise genetic manipulation much nearer than anyone would have guessed ten years ago. And embryological and cellular research in mammals is making astounding progress. On the cover of a recent issue of *Science* is a picture of a hexaparental mouse, born after reaggregation of an early embryo with cells disaggregated from three separate embryos. (Note: That sober journal calls this a "handmade mouse"—i.e., literally a *manu-factured* mouse —and goes on to say that it was "manufactured by genetic engineering techniques.")[11]

3. Storage and banking of living human embryos (and ova) will be undertaken, perhaps commercially. After all, commercial sperm banks are already well-established and prospering.

Space does not permit me to do more than identify a few kinds of questions that must be considered in relation to such possible coming control over human heredity and reproduction: questions about the wisdom required to engage in such practices; questions about the goals and standards that will guide our interventions; questions about changes in the concepts of being human, including embodiment, gender, love, lineage, identity, parenthood, and sexuality; questions about the responsibility of power over future generations; questions about awe, respect, humility; questions about the kind of society we will have if we follow along our present course.[12]

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[11] *Science*, *202*:5, October 6, 1978.

[12] Some of these questions are addressed, albeit too briefly and polemically, in the latter part of my 1972 "Making Babies" article, to which the reader is referred. It has been pointed out to me by an astute colleague that the tone of the present article is less passionate and more accommodating than the first, which change he regards as an ironic demonstration of the inexorable way in which we get used to, and accept, our technological nightmares. I myself share his concern. I cannot decide whether the decline of my passion is to be welcomed; that is, whether it is due to greater understanding bred of more thought and experience, or to greater callousness and the contempt of familiarity bred

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Though I cannot discuss these questions now, I can and must face a serious objection to considering them at all. Most people would agree that the projected possibilities raise far more serious questions than do simple fertilization of a few embryos, their growth *in vitro* to the blastocyst stage, and their possible transfer to women for gestation. Why burden the present decision with these possibilities? Future "abuses," it is often said, do not disqualify present uses (though these same people also often say that "future benefits justify present questionable uses"). Moreover, there can be no certainty that "A" will lead to "B." This thin-edge-of-the-wedge argument has been open to criticism.

But such criticism misses the point, for two reasons. *First,* critics often misunderstand the wedge argument. The wedge argument is not primarily an argument of prediction, that A *will* lead to B, say on the strength of the empirical analysis of precedent and an appraisal of the likely direction of present research. It is primarily an argument about the *logic* of justification. Do the principles of justification *now* used to justify the current research proposal already justify *in advance* the further developments? Consider some of these principles:

1. It is desirable to learn as much as possible about the processes of fertilization, growth, implantation, and differentiation of human embryos and about human gene expression and its control.

2. It would be desirable to acquire improved techniques for *enhancing* conception and implantation, for *preventing* conception and implantation, for the treatment of genetic and chromosomal abnormalities, etc.

3. In the end, only research using *human* embryos can answer these questions and provide these techniques.

4. There should be no censorship or limitation of scientific inquiry or research.

This logic knows no boundary at the blastocyst stage, or for that matter, at any later stage. For these principles *not* to justify future extensions of current work, some independent additional principles, limiting such justification to particular stages of development, would have to be found. Here, the task is to find such a biologically defen-

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from *too much* thought and experience. It does seem to me now that many of the fundamental beliefs and institutions that might be challenged by laboratory growth of human embryos and by laboratory-assisted reproduction are already severely challenged in perhaps more potent and important ways. Here, too, we see the creeping effect of the aggregated powers of modernity and the corrosive power of the familiar. Adaptiveness is our glory and our curse: as Raskolnikov put it, "Man gets used to everything, the beast!"

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sible distinction that could be respected as reasonable and not arbitrary, a difficult--perhaps impossible--task, given the continuity of development after fertilization. The citizenry, myself included, will want to know *precisely* what grounds our policy makers will give for endorsing Soupart's research, and whether their principles have not already sanctioned future developments. If they do give such wedge-opening justifications, let them do so deliberately, candidly, and intentionally.

A better case to illustrate the wedge logic is the principle offered for the embryo-transfer procedures as treatment for infertility. Will we support the use of *in vitro* fertilization and embryo transfer because it provides a "child of *one's own,*" in a strict sense of *one's own*, to a married couple? Or will we support the transfer because it is treatment of involuntary infertility, which deserves treatment in or out of marriage, hence endorsing the use of any available technical means (which would produce a healthy and normal child), including surrogate wombs, or even ectogenesis?

Second, logic aside, the opponents of the wedge argument do not counsel well. It would be simply foolish to ignore what might come next, and to fail to make the *best possible* assessment of the implications of present action (or inaction). Let me put the matter very bluntly: the Ethics Advisory Board, in the decision it must now make, may very well be helping to decide whether human beings will eventually be produced in laboratories. I say this not to shock --and I do not mean to beg the question of whether that would be desirable or not. I say this to make sure that they and we face squarely the full import and magnitude of this decision. Once the genies let the babies into the bottle, it may be impossible to get them out again.

VIII

So much, then, for the meaning of initiating and manipulating human embryos in the laboratory. These considerations still make me doubt the wisdom of proceeding with these practices, both in research and in their clinical application, notwithstanding that valuable knowledge might be had by continuing the research and identifiable suffering might be alleviated by using it to circumvent infertility. To doubt the wisdom of going ahead makes one at least a fellow-traveller of the opponents of such research, but it does not, either logically or practically, require that one join them in trying to prevent it, say by legal prohibition. Not every folly can or should

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be legislated against. Attempts at prohibition here would seem to be both ineffective and dangerous—ineffective because impossible to enforce, dangerous because the costs of such precedent-setting interference with scientific research might be greater than the harm it prevents. To be sure, we already have legal restrictions on experimentation with human subjects, which restrictions are manifestly not incompatible with the progress of medical science. Neither is it true that science cannot survive if it must take some direction from the law. Nor is it the case that all research, because it is research, is or should be absolutely protected. But it does not seem to me that *in vitro* fertilization and embryo transfer deserve, *at least at present,* to be treated as sufficiently dangerous for legislative interference.

But if to doubt the wisdom does not oblige one to seek to outlaw the folly, neither does a decision *to permit* require a decision *to encourage or support.* A researcher's freedom to do *in vitro* fertilization, or a woman's right to have a child with laboratory assistance, in no way implies a public (or even a private) obligation to pay for such research or treatment. A right *against* interference is not an entitlement *for assistance.* The question before the Ethics Advisory Board and the Department of Health, Education, and Welfare is *not* whether to permit such research but whether the Federal government should fund it. This is the policy question that needs to be discussed.

The arguments in favor of Federal support are well known. *First,* the research is seen as continuous with, if not quite an ordinary instance of, the biomedical research which the Federal government supports handsomely; roughly two-thirds of the money spent on biomedical research in the United States comes from Uncle Sam. Why is this research different from all other research? Its scientific merit has been attested to by the normal peer-review process at NIH. For some, that is a sufficient reason to support it.

Second, there are specific practical fruits expected from the anticipated successes of this new line of research. Besides relief for many cases of infertility, the research promises new birth-control measures based upon improved understanding of the mechanisms of fertilization and implantation, which in turn could lead to techniques for blocking these processes. Also, studies on early embryonic development hold forth the promise of learning how to prevent some congenital malformations and certain highly malignant tumors (e.g., hydatidiform mole) that derive from aberrant fetal tissue.

Third, as he who pays the piper calls the tune, Federal support would make easy the Federal regulation and supervision of this re-

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search. For the government to abstain, so the argument runs, is to leave the control of research and clinical application in the hands of profit-hungry, adventurous, insensitive, reckless, or power-hungry private physicians, scientists, or drug companies; or, on the other hand, at the mercy of the vindictive, mindless, and superstitious civic groups that will interfere with this research through state and local legislation. Only through Federal regulation—which, it is said, can only follow with Federal funding—can we have reasonable, enforceable, and uniform guidelines.

Fourth is the chauvinistic argument that the United States should lead the way in this brave new research, especially as it will apparently be going forward in other nations. Indeed, one witness testifying before the Ethics Advisory Board deplored the fact that the first Louise Brown was British and not American, and complained, in effect, that the existing moratorium on Federal support has already created what one might call an "*in vitro* fertilization gap." The pre-eminence of American science and technology, so the argument implies, is the center of our pre-eminence among the nations, a position which will be jeopardized if we hang back out of fear.

Let me respond to these arguments, in reverse order. Conceding the premise of the importance of American science for American prestige and strength, it is far from clear that failure to support *this* research would jeopardize American science. Certainly the use of embryo transfer to overcome infertility, though a vital matter for the couples involved, is hardly a matter of vital national interest—at least not unless and until the majority of American women are similarly infertile. The demands of international competition, admittedly often a necessary evil, should be invoked only for things that really matter; a missile gap and an embryo-transfer gap are chasms apart. In areas not crucial to our own survival, there will be many things we should allow other nations to develop, if that is their wish, without feeling obliged to join them. Moreover, one should not rush into potential folly to avoid being the last to commit it.

The argument about governmental regulation has much to recommend it. But it fails to consider that there are other safeguards against recklessness, at least in the clinical applications, known to the high-minded as the canons of medical ethics and to the cynical as liability for malpractice. Also, Federal regulations attached to Federal funding will not in any case regulate research done with private monies, say by the drug companies. Moreover, there are enough concerned practitioners of these new arts who would have a compelling interest in regulating their own practice, if only to es-

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cape the wrath and interference of hostile citizen groups in response to unsavory goings-on. The available evidence does not convince me that a sensible practice of *in vitro* experimentation requires regulation by the Federal government.

In turning to the argument about anticipated technological powers, we face difficult calculations of unpredictable and more-or-less-likely costs and benefits, and the all-important questions of priorities in the allocation of scarce resources. Here it seems useful to consider separately the techniques for generating children and the anticipated techniques for birth control or for preventing developmental anomalies and malignancies.

First, accepting that providing a child of their own to infertile couples is a worthy goal—and it is both insensitive and illogical to cite the population problem as an argument for ignoring the problem of infertility—one can nevertheless question its rank relative to other goals of medical research. One can even wonder—and I have done so in print—whether it is indeed a *medical* goal, or a worthy goal for *medicine,* that is, whether alleviating infertility, especially in this way, is part of the art of *healing.*[13] Just as abortion for genetic defect is a peculiar innovation in medicine (or in preventive medicine) in which a disease is treated by eliminating the patient (or, if you prefer, a disease is prevented by "preventing" the patient), so laboratory-fertilization is a peculiar treatment for oviduct obstruction, in that it requires the creation of a new life to "heal" an existing one. All this simply emphasizes the uniqueness of the reproductive organs, in that their proper function involves other people, and calls attention to the fact that infertility is not a "disease," like heart disease or stroke, even though obstruction of a normally patent tube or vessel is the proximate cause of each.

However this may be, there is a more important objection to this approach to the problem. It represents yet another instance of our thoughtless preference for expensive, high-technology, therapy-oriented approaches to disease and dysfunctions. What about spending this money on discovering the causes of infertility? What about the prevention of tubal obstruction? We complain about rising medical costs, but we insist on the most spectacular and the most technological—and thereby the most costly—remedies.

The truth is that we do know a little about the causes of tubal obstruction—though much less than we should or could. For in-

[13] See "Making Babies—the New Biology and the 'Old' Morality," pp. 19-20. See also my "Regarding the End of Medicine and the Pursuit of Health," *The Public Interest,* Number 40, Summer 1975, especially pp. 11-18, and 33-35.

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stance, it is estimated that at least one-third of such cases are the aftermath of pelvic-inflammatory disease, caused by that uninvited venereal guest, gonococcus. Leaving aside any question about whether it makes sense for a Federally-funded baby to be the wage of aphrodisiac indiscretion,[14] one can only look with wonder at a society that will have "petri-dish babies"[15] before it has found a vaccine against gonorrhea.

True, there are other causes of blocked oviducts, and blocked oviducts are not the only cause of female infertility. True, it is not logically necessary to choose between prevention and cure. But *practically* speaking, with money for research as limited as it is, research funds targeted for the relief of infertility should certainly go first to epidemiological and preventive measures—especially where the costs in the high-technology cure are likely to be great.

What about these costs? I have already explored some of the nonfinancial costs, in discussing the meaning of this research for our images of humanness. Let us, for now, consider only the financial costs. How expensive was Louise Brown? We do not know, partly because Drs. Edwards and Steptoe have yet to publish their results, indicating how many failures preceded their success, how many procedures for egg removal and for fetal monitoring were performed on Mrs. Brown, and so on. One must add in the costs of monitoring the baby's development to check on her "normality" and, should it

[14] Consider the following contributions of Federally-supported programs to rationalizing our sexual and reproductive practices. First, we have Federally-supported programs of sex education in elementary schools, so that the children will know what can happen to them (and what they can make happen). Next, in high school, Uncle Sam provides for teen-age contraception, to prevent the consequences of unavoidable sexual activity. Freed of a major deterrent to unrestricted sexual activity, our teen-agers indulge, but not without consequences: They get gonorrhea, which some of them will have treated, again at the taxpayers' expense through Medicaid. But for some the treatment comes too late to prevent scarring and oviduct obstruction: Federally-supported *in vitro* fertilization research and services come to the rescue, to overcome their infertility. Uncle Sam will, of course, also provide Aid to Dependent Children, if the mother is or goes on welfare. How wonderful it is to be infinitely resourceful!

[15] There has been much objection, largely from the scientific community, to the phrase "test-tube baby." More than one commentator has deplored the exploitation of its "flesh-creeping" connotations. They point out that a flat petri-dish is used, not a test-tube—as if that mattered—and that the embryo spends but a few days in the dish. But they don't ask why the term "test-tube baby" remains the popular designation, and whether it does not embody more of the deeper truth than a more accurate, laboratory appellation. If the decisive difference is between "in the womb" or "in the lab," the popular designation conveys it. (See 'Afterword', below.) And it is right on target, and puts us on notice, if the justification for the present laboratory procedures tacitly also *justifies* future extensions, including full ectogenesis—say, if that were the only way a womb-less woman could have a child of her own, without renting a human womb from a surrogate bearer.

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come, the costs of governmental regulation. A conservative estimate might place the costs of a successful pregnancy of this kind at between five and ten thousand dollars. If we use the conservative figure of 500,000 for estimating the number of infertile women *with blocked oviducts* in the United States whose *only* hope of having children lies in *in vitro* fertilization,[16] we reach a conservative estimated cost of $2.5 to $5 billion. Is it really even fiscally wise for the Federal government to start down this road?

Clearly not, if it is also understood that the costs of providing the service, rendered possible by a successful technology, will also be borne by the taxpayers. Nearly everyone now agrees that the kidney-machine legislation, obliging the Federal government to pay about $25,000-$30,000 per patient per year for kidney dialysis for anyone in need, (cost to the taxpayers in 1978 was nearly $1 billion), is an impossible precedent—notwithstanding that individual lives have been prolonged as a result. But once the technique of *in vitro* fertilization and embryo transfer is developed and available, how should the baby-making be paid for? Should it be covered under medical insurance? If a National Health Insurance program is enacted, will and should these services be included? (Those who argue that they are part of medicine will have a hard time saying no.) Failure to do so will make this procedure available only to the well-to-do, on a fee-for-service basis. Would that be a fair alternative? Perhaps; but it is unlikely to be tolerated. Indeed, the principle of equality—equal access to equal levels of medical care—is the leading principle in the pressure for medical reform. One can be certain that efforts will be forthcoming to make this procedure available equally to all, independent of ability to pay, under Medicaid or National Health Insurance or in some other way. (I have recently learned that a Boston-based group concerned with infertility has obtained private funding to pay for artificial insemination for women on welfare!!)

Much as I sympathize with the plight of infertile couples, I do not

[16] This figure is calculated from estimates that between 10 and 15 percent of all couples are involuntarily infertile, and that in more than half of these cases the cause is in the female. Blocked oviducts account for perhaps 20 percent of the causes of female infertility. Perhaps 50 percent of these women might be helped to have a child by means of reconstructive surgery on the oviducts; the remainder could conceive *only* with the aid of laboratory fertilization and embryo transfer. These estimates do not include additional candidates with uterine disease (who could "conceive" only by embryo transfer to surrogate-gestators), nor those with ovarian dysfunction who would need egg donation as well, nor that growing population of women who have had tubal ligations and who could later turn to *in vitro* fertilization. It is also worth noting that not all the infertile couples are childless; indeed, a surprising number are seeking to enlarge an existing family.

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believe that they are entitled to the provision of a child at the public expense, especially at this cost, especially by a procedure that also involves so many moral difficulties. Given the many vexing dilemmas that will surely be spawned by laboratory-assisted reproduction, the Federal government should not be misled by compassion to embark on this imprudent course.

In considering the Federal funding of such research for its other anticipated technological benefits, independent of its clinical use in baby-making, we face a more difficult matter. In brief, as is the case with all basic research, one simply cannot predict what kinds of techniques and uses this research will yield. But here, also, I think good sense would at present say that before one undertakes *human in vitro* fertilization to seek new methods of birth control—e.g., by developing antibodies to the human egg that would physically interfere with its fertilization—one should make adequate attempts to do this in animals. One simply can't get large-enough numbers of human eggs to do this pioneering research well—at least not without subjecting countless women to additional risks not for their immediate benefit. Why not test this conceit first in the mouse or rabbit? Only if the results were very promising—and judged also to be relatively safe in practice—should one consider trying such things in humans. Likewise, the developmental research can and should be first carried out in animals, especially in primates. Though *in vitro* fertilization has yet to be achieved in monkeys, embryo transfer of *in vivo* fertilized eggs has been accomplished, thus permitting the relevant research to proceed. Purely *on scientific grounds,* the Federal government ought not *now* to be investing funds in this research for its promised technological benefits—benefits which, in the absence of pilot studies in animals, must be regarded as mere wishful thoughts in the imaginings of scientists.

There remains the first justification, research for the sake of knowledge: knowledge about cell cleavage, cell-cell and cell-environment interactions, and cell differentiation; knowledge of gene action and of gene regulation; knowledge of the effects and mechanisms of action of various chemical and physical agents on growth and development; knowledge of the basic processes of fertilization and implantation. This is all knowledge worth having, and though much can be learned using animal sources—and these sources have barely begun to be sufficiently exploited—the investigation of these matters in man would, sooner or later, require the use of human-embryonic material. Here, again, there are questions of research priority about which there is room for disagreement, among scientists and laymen

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alike. But these questions of research priority, while not irrelevant to the decision at hand, are not the questions that the Ethics Advisory Board was constituted to answer.

It was constituted to consider whether such research is consistent with the ethical standards of our community. The question turns in large part on the status of the early embryo. If, as I have argued, the early embryo is deserving of respect because of what it is, now and potentially, it is difficult to justify submitting it to invasive experiments, and especially difficult to justify *creating it solely* for the purpose of experimentation. But even if this argument fails to sway the Board, another one should. For their decision, I remind you, is not whether *in vitro* fertilization should be permitted in the United States, but whether *our* tax dollars should encourage and foster it. One cannot, therefore, ignore the deeply held convictions of a sizeable portion of our population—it may even be a majority on this issue—that regards the human embryo as protectable humanity, not to be experimented upon except for its own benefit. Never mind if these beliefs have a religious foundation—as if that should ever be a reason for dismissing them! The presence, sincerity, and depth of these beliefs, and the grave importance of their subject, is what must concern us. The holders of these beliefs have been very much alienated by the numerous court decisions and legislative enactments regarding abortion and research on fetuses. Many who, by and large, share their opinions about the humanity of prenatal life have with heavy heart gone along with the liberalization of abortion, out of deference to the wishes, desires, interests, or putative rights of pregnant women. But will they go along here with what they can only regard as gratuitous and willful assaults on human life, or at least on potential and salvageable human life, and on human dignity? We can ill afford to alienate them further, and it would be unstatesmanlike, to say the least, to do so, especially in a matter so little important to the national health and one so full of potential dangers.

Technological progress can be but one measure of our national health. Far more important is the affection and esteem in which our citizenry holds its laws and institutions. No amount of relieved infertility is worth the further disaffection and civil contention that the lifting of the moratorium on Federal funding is likely to produce. People opposed to abortion and people grudgingly willing to permit women to obtain elective abortion, at their own expense, will not tolerate having their tax money spent on scientific research requiring what they regard as at best cruelty, at worst murder. A prudent Ethics Advisory Board and a prudent and wise Secretary of Health,

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Education, and Welfare should take this matter most seriously, and refuse to lift the moratorium—at least until they are persuaded that public opinion will overwhelmingly support them. Imprudence in this matter may be the worst sin of all.

An afterword

This has been for me a long and difficult exposition. Many of the arguments are hard to make. It is hard to get confident people to face unpleasant prospects. It is hard to get many people to take seriously such "soft" matters as lineage, identity, respect, and self-respect when they are in tension with such "hard" matters as a cure for infertility or new methods of contraception. It is hard to talk about the meaning of sexuality and embodiment in a culture that treats sex increasingly as sport and that has trivialized the significance of gender, marriage, and procreation. It is hard to oppose Federal funding of baby-making in a society which increasingly demands that the Federal government supply all demands, and which—contrary to so much evidence of waste, incompetence, and corruption—continues to believe that only Uncle Sam can do it. And, finally, it is hard to speak about restraint in a culture that seems to venerate very little above man's own attempt to master all. Here, I am afraid, is the biggest question and the one we perhaps can no longer ask or deal with: the question about the reasonableness of the desire to become masters and possessors of nature, human nature included.

Here we approach the deepest meaning of *in vitro* fertilization. Those who have likened it to artificial insemination are only partly correct. With *in vitro* fertilization, the human embryo emerges for the first time from the natural darkness and privacy of its own mother's womb, where it is hidden away in mystery, into the bright light and utter publicity of the scientist's laboratory, where it will be treated with unswerving rationality, before the clever and shameless eye of the mind and beneath the obedient and equally clever touch of the hand. What does it mean to hold the beginning of human life before your eyes, in your hands—even for 5 days (for the meaning does not depend on duration)? Perhaps the meaning is contained in the following story:

Long ago there was a man of great intellect and great courage. He was a remarkable man, a giant, able to answer questions that no other human being could answer, willing boldly to face any challenge or problem. He was a confident man, a masterful man. He saved his city from disaster and ruled it as a father rules his children,

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revered by all. But something was wrong in his city. A plague had fallen on generation; infertility afflicted plants, animals, and human beings. The man confidently promised to uncover the cause of the plague and to cure the infertility. Resolutely, dauntlessly, he put his sharp mind to work to solve the problem, to bring the dark things to light. No secrets, no reticences, a full public inquiry. He raged against the representatives of caution, moderation, prudence, and piety, who urged him to curtail his inquiry; he accused them of trying to usurp his rightfully earned power, of trying to replace human and masterful control with submissive reverence. The story ends in tragedy: He solved the problem but, in making visible and public the dark and intimate details of his origins, he ruined his life, and that of his family. In the end, too late, he learns about the price of presumption, of overconfidence, of the overweening desire to master and control one's fate. In symbolic rejection of his desire to look into everything, he punishes his eyes with self-inflicted blindness.

Sophocles seems to suggest that such a man is always in principle —albeit unwittingly—a patricide, a regicide, and a practitioner of incest. We men of modern science may have something to learn from our forebear, Oedipus. It appears that Oedipus, being the kind of man an Oedipus is (the chorus calls him a paradigm of man), had no choice but to learn through suffering. Is it really true that we too have no other choice?

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Blacks, whites, and "race politics"

LOUIS HENRI BOLCE III
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ANYONE reading the newspapers or watching television today could hardly escape the conclusion that monolithic white and black populations remain irrevocably divided in their opinions. During one typical week last winter, stories clearly "racial" in focus, nearly all emphasizing racial polarization and the victimization of blacks, ran a close second to the coal strike in the competition for front-page coverage in *The New York Times*. Not only do blacks and whites appear to be split over almost everything, but if one heeds those who are "telling it like it is," this gulf seems to be widening. The New York Urban League, for example, concluded in its annual report for 1978, "Black/white relationships deteriorated considerably in New York City last year." A similar study by the Chicago Urban League predicts the outbreak of violent black protests. Public-opinion analyst Gerald Pomper claims that "a broad racial division has developed in regard to most political attitudes." And the lead sentence of *The New York Times*' recent analysis of racial progress since the Kerner Report warns that racial polarization still exists and that the "chances of healing the rift may be more dismal today than they were 10 years ago."

Central to the popular understanding of race relations is the as-

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sumption of attitudinal conflict between blacks and whites. As the Kerner Commission noted a decade ago, racial division ultimately boils down to a conflict in attitudes. White racism or indifference to the needs of blacks is the common explanation for much of the divergence in white and black attitudes, and the tendency to see whites as well-off and advantaged and blacks as poor and disadvantaged widens the schism still further.

Such misconceptions result in what William F. Buckley recently characterized as "race politics." On each issue of major importance there is presumably a white and a black point of view, each in direct opposition to the other. Contemporary social ills and their remedies are viewed not in terms of the problems themselves but in terms of their presumed consequences for certain racial groups, and it is assumed that one racial group benefits at the expense of another.

The "black" point of view on the economy as articulated by civil-rights leaders and black spokesmen emphasizes the need for a public-employment program and similar measures that lead to expansion of the Federal government. On the other hand, the "white" point of view focuses on price stability, anti-inflation measures, and reductions in Federal expenditures and powers. The supposed polarity of blacks and whites over economic policy is based on the assumption that if you are white you are gainfully employed and if you are black you are not likely to be. The "black" point of view supposedly presumes that affirmative-action quotas are justified compensation for past discrimination and necessary to assure and hasten black progress. The "white" point of view is that they are neither necessary nor justified and constitute discrimination in reverse. These examples could easily be multiplied.

Racial polarity not only implies conflict in attitudes between races, it also implies homogeneity of opinion within races. It assumes that on any particular issue a *substantial* number of blacks are in disagreement with a *substantial* number of whites. It would be hard to make a strong case for the existence of racial polarity over a particular policy issue (affirmative-action quotas, for example) if whites and blacks themselves were divided over the issue, and especially if large segments of each race were in basic agreement with one another. Without homogeneity of opinion within racial groups, it would be difficult to show which attitudes represent the point of view of a particular racial group. If blacks are divided over law and order, for example—some favoring tougher penalties to control crime, others opting for the elimination of root causes—which point of view is the "black" point of view or reflects the interests of

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blacks? Certainly the black point of view, if it is *the* black point of view, must reflect more than the thinking of a handful of civil-rights leaders and black spokesmen. It must mirror the thinking of a majority within the black community.

Most elite discussion of politics assumes the existence of racial polarity, but to what extent is this justified by the opinion of the general public? If the rift between whites and blacks is substantial and growing, we would expect to see the greatest degree of racial polarity on issues that have a direct bearing on race relations, such as affirmative-action quotas, preferential treatment, and busing. We would also expect to find great homogeneity of black opinion on these issues.

Racial consensus or racial polarization?

We interviewed a random sample of 600 New York City residents by telephone between the months of April and July 1977 to determine the extent to which blacks and whites are divided over preferential treatment, racial quotas, and busing for the purpose of achieving school desegregation. The survey responses can also be used to assess the degree to which blacks and whites are split over some of the rationales for these policies, notably the idea that blacks are victimized and that whites are responsible for remedying the present condition of blacks.

Affirmative action means many things to many people. The phrase was first coined in March 1961, when John F. Kennedy issued an executive order requiring that contractors act affirmatively to recruit minorities on a non-discriminatory basis. It was a policy geared toward ensuring qualified minorities equal access to job opportunities. Affirmative action originally meant that employers should aggressively seek out qualified applicants from sources where they might be found. Since that time it has been enlarged to include compensatory training, preferential treatment, goals, quotas, and busing.

Included in our survey were two questions designed to measure attitudes toward the two aspects of affirmative-action policy debated most fiercely today: preferential treatment for "equally qualified" blacks, and the policy of hiring and admitting to schools black applicants "less qualified" than white applicants for the purpose of achieving proportional representation. Depending on how one is disposed toward reading the data, racial polarization can be seen to exist or not to exist.

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Attitudes Toward Preferential Treatment[1]

Proposition: "There should be a Federal law which would give special advantages to blacks over whites in college entrance and job hiring in order to make up for the mistreatment they received in the past."

WHITES		BLACKS	
Agree	12%	Agree	40%
Disagree	85%	Disagree	53%

[1] Source: Authors' survey of 600 New York City residents, April-July 1977.

If the survey analyst is disposed to stress racial differences, he will undoubtedly emphasize that blacks favor preferential treatment by a margin of three-to-one over whites. Forty percent of the black respondents compared to 12 percent of the whites agreed that "there should be a Federal law that would give special advantages to blacks over whites in college entrance and job hiring in order to make up for the mistreatment they received in the past." The person not inclined to stress polarization, while recognizing that blacks are more likely than whites to support preferential treatment, would direct attention to the fact that a majority of both races opposes preferential-treatment policies. A Gallup poll carried out in March 1977 reveals a similar pattern of findings. Gallup asked his sample whether blacks and women "should be given preferential treatment in getting jobs and places in college" or whether ability should be the main consideration. A minority of blacks as well as whites favored preferential treatment over ability.

Even blacks who favor preferential treatment do not confer blanket approval on all other affirmative-action programs. For example, they do not throw their unequivocal support to racial quotas or what has been sensationalized as "reverse discrimination." This is revealed by the responses of blacks to a second question on affirmative action in our survey, one that introduces the idea of competence. Black approval of affirmative action when it takes the form of a "Federal law that favors less-qualified blacks over whites in college entrance and job hiring," was halved: In fact, blacks were only slightly more supportive of this policy than were whites. That blacks and whites are not in substantial disagreement over affirmative-action quotas is also demonstrated by the findings of the October 1977 *New York Times*/CBS poll on discrimination and affirmative action. Thirty-two percent of whites compared to 46 percent of blacks favored the policy of having schools reserve "a certain number of places for minority applicants, even if it meant that some qualified white applicants wouldn't be admitted." A 14-percent difference is hardly what we would call polarization.

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Busing for the purpose of school desegregation is another social issue related to race politics. The popular view as articulated by the media is that this issue is polarizing, with blacks supporting busing and whites opposing it. Blacks are believed to favor busing because they see it as a means to achieve racial integration and greater educational opportunities for their children. Whites are believed to oppose busing because they don't want their children sent to schools where a large proportion of blacks are enrolled and because they don't want to have large numbers of black children brought into their neighborhoods. The periodic clashes over busing in Boston, Louisville, and other cities are cited to support this view.

But the idea that whites and blacks are in conflict over busing is not supported by public-opinion data. A majority of both groups (81 percent of whites and 51 percent of blacks, according to a Harris poll conducted during the summer of 1976) oppose it, and both are in substantial agreement that one of the effects of busing is racial animosity. Fifty-two percent of blacks in our sample and three-quarters of the whites felt that "busing school children across district lines makes relations between the races worse." [1] Here again one could ignore the agreement and emphasize differences by saying that blacks were roughly three times more likely than whites to say that busing is not harmful to race relations.

Some might be surprised to find that blacks and whites on the whole oppose busing and agree that it has negative social consequences. That this is surprising is one example of how race politics produces misconceptions and false divisions. And we would expect to see the same pattern if blacks and whites were asked to evaluate the social consequences of other race-related issues like affirmative-action quotas. The bottom line of race politics is the perception that another racial group is advocating or benefiting from a policy detrimental to one's own group. Most whites do not perceive busing, for example, as beneficial to themselves, but see it rather as geared to blacks, and thus assume blacks overwhelmingly support it. And so long as whites and blacks perceive (or are told) that blacks hold beliefs different from most whites, there is potential for conflict. One solution to the conflict is to avoid sustained interracial contact. But the truth is that whites have a misperception of the attitudes of a

[1] The belief, held by both whites and blacks, that busing heightens racial antagonism is not out of line with what actually occurs, according to David Armor's review of some evidence on busing. Bused students were more likely to report experiences of unfriendliness and prejudice that exacerbated racial tensions. Armor also found that bused black students were "more opposed to integration than the non-bused students."

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majority of the black community and blacks appear to have similar misperceptions of white attitudes.

Victimization and responsibility

There are a number of rationales for affirmative-action policies, but none has achieved the prominence of the thesis that blacks have been victimized and whites must provide reparations. (People in our survey who held these beliefs were considerably more likely to support affirmative-action quotas than those who did not.) A fundamental idea of the black-victimization thesis is that individual effort will be thwarted by racism perpetuated by institutionalized biases in admission, hiring, and promotion practices. Even though many formal and legal barriers to achievement have been struck down, the proponents of this view point out that the more insidious effects of a history of racism remain, and thus perpetuate inequality in opportunity. Since whites are responsible for the social injustices directed toward blacks and as a group have advanced at the expense of blacks, the argument goes, they must now shoulder most of the responsibility for correcting past wrongs by giving blacks the edge that whites once had in hiring, promotion, and school admissions. This line of reasoning is what *The New York Times* had in mind in a recent editorial:

> One complaint of white men is that any recognition of race . . . in the distribution of opportunity is illegal. But American law itself has been an instrument of discrimination and deprivation. The courts, as well as society, have acknowledged the wrongs, identified the victims, and called for relief and remedy. And where the law served discrimination by race . . . it logically must permit relief and remedy that recognize and compensate for race . . .

The popular wisdom, supported by black and white elites and passed along by the national media, would say that belief in black victimization and white responsibility for shouldering the remedy splits along racial lines. Supposedly, whites feel that blacks can get ahead if they are motivated to do so and work hard, and that whites have no special responsibility for those blacks who don't; the black view is thought to be exactly the opposite. But in fact, black and white opinions on this matter, as is so often the case, are in far greater agreement than current wisdom would have us believe.

That blacks and whites are not divided over this issue is pointed up by their response to two items in our survey. (Of course, those who are inclined to see racial division will see it here, too.) One

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item was designed to measure the extent of public belief that blacks are victimized by asking for agreement or disagreement with the statement, "A young black cannot get ahead in this country no matter how hard he works." Three times as many blacks as whites agreed with the statement (39 percent to 12 percent); a majority of both blacks and whites were united in their rejection of this statement. Fifty-six percent of blacks and 83 percent of whites feel that a young black does have a shot at getting ahead provided he is motivated and works hard. Nor are blacks and whites substantially polarized over the question of present white responsibility. A majority of whites (56 percent) feel that "Today, white people are not responsible for the conditions of black people," and over four out of 10 (44 percent) of the blacks feel the same way. An equal number of the blacks hold whites accountable. If anything, the white-responsibility and black-victimization issues have had the effect of driving a wedge through the center of black community opinion, rather than creating a rift between whites and blacks.

On all the issues discussed above, all of which have a direct bearing on race, a lack of racial polarization is the rule rather than the exception. This is not to argue, however, that blacks and whites are in substantial agreement on every issue of major concern. The extent of agreement varies according to the issue and how it is framed. For example, the 1977 *New York Times*/CBS poll revealed substantial disagreement between blacks and whites over the question of whether businesses should be required to hire a certain number of minority workers—blacks generally support this policy, whites generally oppose it. Nor are we arguing that a majority of blacks oppose all forms of affirmative-action programs (The *New York Times*/CBS survey and many other polls provide evidence to the contrary), or that most whites are against programs geared toward helping the disadvantaged. For instance, almost all polls show that many whites are generally supportive of compensatory programs designed to upgrade the skills and opportunities of people with limited training and low income.

What we are arguing is that racial division is not automatic and should not be expected on race-related issues. Needless to say, racial conflict also should not be expected on issues not directly related to race (welfare or education policy, for example). There are very few issues on which a majority of whites line up on one side and a majority of blacks line up on the other. While on most of the issues we have discussed there was something approaching a white monolith in opinion, this was not the case for blacks. In looking

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for a black point of view, we see several, each with substantial support, and each in opposition to the others.

The diversity of black opinion

There seem to be at least two black points of view on the issues of affirmative-action quotas and preferential treatment, busing, black victimization, white responsibility, and crime control. Conventional wisdom still insists that if given the choice between tighter police control in low-income areas and elimination of "root causes" such as poverty as strategies for reducing crime, blacks would overwhelmingly favor the latter—a misconception of black attitudes toward law and order discredited 10 years ago by James Q. Wilson. Our poll shows the black community split right down the middle on the question, with 44 percent favoring "tighter police control" and the same proportion favoring elimination of the social conditions that breed crime.

Blacks, like whites, differ among themselves over policy questions when their interests differ. Differences within the black community in age, income, education, and other social and economic factors—as well as ideological differences—account for black heterogeneity in opinion. In other words, blacks hold a variety of opinions, just as do whites, and for the same reasons.

The division within the black community over affirmative-action quotas and preferential treatment illustrates this point well. Affirmative-action policies receive their strongest support from blacks who would benefit most from them. Young blacks are one-and-a-half times as likely to support preferential treatment as blacks 40 years of age and older (48 percent to 32 percent). They are also one-and-a-half times as likely to favor quotas that could result in hiring blacks less qualified than whites. The issue concerning quotas produces considerable indecisiveness among older blacks, who are two-and-a-half times as likely as younger blacks to answer "don't know" (22 percent to 9 percent). The weaker support for affirmative action among older blacks could be linked to a number of factors including its threat to their job position because of increased competition and the conflict between values expressed in their white-dominated work environment and in their home environment in the black community.

On the whole, lower-status blacks are more likely to favor affirmative-action programs than higher-status blacks, but this tendency depends on the particular program being evaluated. Attitudinal

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conflict within the black community appears to be much more class-based on the issue of quotas than on the issue of preferential treatment for qualified blacks. For example, support for programs that could result in hiring blacks "less qualified" than whites drops progressively as one moves from lower to higher income groups. Blacks with family incomes under $8,000 are roughly twice as likely to support this type of program as blacks with incomes of $13,000 and above, and one-and-a-half times as likely as the in-between group. When the question turns to preferential treatment, blacks with higher incomes are just as inclined to support it as those with low incomes (44 percent each).

While many factors probably account for this pattern, self-interest appears to play the pre-eminent role. Those in the lowest income groups possess the fewest skills and lowest qualifications, and no doubt recognize their limitations when compared to persons of other social and economic groups. Racial quotas would mean more and probably better jobs than are currently available to them. Blacks with higher incomes, on the other hand, are more likely to have stronger credentials and more skills. A program of quotas would not serve their interests at all—they're already qualified—and might even make their situation worse by creating greater competition for their own jobs and giving the appearance that they might have been one of the persons hired as "less qualified." Blacks with a family income of $13,000 or over rejected racial quotas by a margin of four to one (70 percent disapprove; 17 percent approve).

While racial quotas may not be in the interest of the middle-class black, preferential treatment is, as it is for all blacks; and accordingly, support for preferential treatment, as compared to quotas, increases in all groups, but most precipitously among higher-income blacks (from 17 percent to 44 percent).

This pattern recurs when we compare educational attainment and support for affirmative action. Blacks who are college educated are more inclined to reject quotas than blacks with a high-school degree or less (82 percent to 57 percent), but are no more likely to oppose preferential treatment than those who have not gone to college. While there are probably some exceptions, there is little reason to doubt that when an issue affects various interests within the black community differently, individuals will evaluate the policy with their interests in mind and act accordingly, as we expect any other racial group would. Since affirmative action for blacks is not seen as a benefit to whites as a group, it is not surprising that whites are more united in their opposition to it. Similarly, when

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a law or policy directly affects all blacks, regardless of class and cultural differences—as does, say, residential desegregation—we should expect a more unified response from the black community.

Data tying black support for affirmative-action policies to age differences and class background raise several interesting points about ongoing trends within the black community that social scientists and national black political and civil-rights leaders have tended to ignore or overlook. Our findings contradict the popular conception of monolithic black opinion, especially on such race-related issues as affirmative action and related programs. Opinion is heterogeneous even among black political "influentials," as reflected in the January 1978 findings of a survey of black leaders in the nation carried out by *Tony Brown's Journal,* a nationally syndicated television program. When queried on the busing issue, for example, 60 percent disagreed with the proposition that children should be "bused to schools outside of their neighborhoods to achieve desegregation," while only 40 percent agreed. And this group of respondents was completely divided over the question of the motivation of whites who oppose racial quotas. Fifty-one percent felt that "whites who are against quotas are anti-black," while 49 percent disagreed.

Through the looking glass

In light of these findings, which reflect trends that have been going on for the last decade or so, why do so many people still think that whites and blacks disagree vehemently on almost every issue? We believe this *Alice in Wonderland* perception of race relations persists because it is constantly reinforced by national black-political leaders, social scientists, and the national news media.

There is no question that at one time the black community was much more homogeneous in opinion, and—the two are intimately related—that black socio-economic status was once much more homogeneous than it is today. Prior to the mid-1960's, for example, a majority of black males had not attained a high-school degree and a majority of black families had incomes below the poverty level. But today, the socio-economic picture of the black community is very different. Blacks still compose a disproportionately large share of the nation's poor, but the overwhelming majority of black families are living above the poverty level. Indeed, the number of black families in the middle and upper-middle classes (incomes of $15,000 and above) nearly equals the number below the poverty level (28 percent for the former and roughly 30 percent

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for the latter). Although blacks are more likely than whites to attend less-prestigious colleges, the proportion of black college students in the total college population has doubled in the past decade to almost 11 percent, a figure approaching the proportion of blacks in the school-age population. And while blacks are more likely than whites to be concentrated in lower-status jobs, the majority of working blacks (64 percent, according to the 1970 census) presently hold white-collar or union jobs, whereas only 42 percent held such jobs in 1960. The black population cannot now be characterized as affluent or poor, educated or uneducated, skilled or unskilled, but as all of these.

A decade or more ago relations between whites and blacks were more polarized. Blacks were fighting to secure the basic rights and opportunities accorded most other Americans, and many whites fought just as hard to deny them. The civil-rights struggle grew out of an attempt to attain these rights and was successful, as court decisions and legislation outlawed most overt forms of discrimination. Today, the focus of the civil-rights movement is no longer constitutional rights but—as Moynihan and others have pointed out—social and economic issues. The constitutional issues of the civil-rights movement affected all blacks in the same way, but social and economic policies affect blacks differently, according to their class and cultural backgrounds. Thus, present "race-related" issues receive less support among blacks, and are even resisted by some. There is little doubt that the differences in life experiences, interests, and culture brought about by the socio-economic and political transformations of the last 15 years, are beginning to play a much greater role among blacks—one similar to the role they play among whites. This development and the corresponding variations in black opinion have been downplayed or ignored by social scientists, national black leaders, and the national news media.

It has long been noted that intellectuals often align themselves with causes on the left, and this was true as well of many of the social scientists who emerged from the intellectual climate of the 1960's. They were activist in orientation, merging research and social relevance, and their studies often reflected the hope that their findings would guide policy toward positive social change. Their orientation, however, had unforeseen consequences, and may have led to a result opposite to their original intentions. Consider, for example, how many social scientists explained the black urban riots. Their intention was to improve race relations, to shed light on the causes of the riots, and to ensure a massive Federal commit-

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ment to the black community by eliciting white sympathy. And so the riots were condoned in many quarters as a legitimate form of political protest, in the belief that it would be difficult to get large-scale monetary support for the black community if the rioters were viewed as criminally prone "riff raff" and unrepresentative of the black community—as the McCone Commission found in the case of the Watts rioters.

To disprove the findings of the McCone Commission and others, new surveys were commissioned, new researchers went to work, and new data were analyzed. In time a new explanation was developed, received the imprimatur of the Kerner Commission, and became the accepted social-science (and official) view of the riots. Unlike the McCone portrayal of the rioter, the new urban rioter was seen as representative not only of the black community, but indeed of the best segments of that community. In short, he represented, as T. M. Tomlinson put it, "the cream of urban youth in particular and urban citizens in general." Racism and longstanding and long-ignored grievances against the "white-dominated" political system were represented as the fundamental cause of the riots—not the class and cultural characteristics of the rioters. All blacks were lumped together as an undifferentiated mass of potential rioters with the same ideology—violence-prone with non-violent, middle and working class with underclass, religious leaders with youth gangs, shop owners with drug addicts, and looters and arsonists with non-violent political protesters.

But a theory whose structure, as one study concluded, was built on miscalculated statistics, faulty methodology, considerable conceptual sloppiness and ideologically guided data analysis, could not withstand protracted examination (See Miller, Bolce, and Halligan in *Ethnicity*, December 1976). The Kerner interpretation of the riots was disproved by that study and by others whose findings and analyses demonstrated that rioters were generally unrepresentative of the black community. They were drawn largely from underclass youth. Political grievances may have served as an impetus for some to riot, but when compared to other factors related to their class and cultural background—personal dissatisfaction, hostility, and uncertainty about the future—as well as, in Edward Banfield's phrase, "fun and profit,"—they were not overriding factors. However, it is the riot-as-political-protest view that prevails in social-science literature and textbooks today, and that shapes popular images of blacks. In portraying rioters as the typical blacks, and failing to distinguish between non-violent protest over legitimate grievances and simple

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looting and arson, the activist social-science view probably exacerbated America's racial difficulties. The failure of activist social scientists adequately to differentiate among groups (white as well as black), and between political protest and hooliganism, very likely increased the fear among many whites of *all* blacks, encouraged many to oppose all political protest as unlawful and violence-prone, and spurred stereotypes of blacks as complaining and perpetually unsatisfied and of whites as racists. There is good reason to think that although the intention of these social scientists was to produce racial harmony, the results were exactly the opposite. Explaining riots primarily in terms of the class and cultural characteristics of the rioters, instead of as a community reaction to white racism, would not necessarily have led to an active and enlightened government and public response to the conditions that produce poverty and slum riots. But if attention had been focused then on lower-class culture and its corrosive effects upon the human spirit and character rather than on the general black community, and if policies had been designed accordingly, we might have been spared some of the consequences of a criminal class that was surprised to see its behavior justified by opinion leaders.

National black elites also share the misconception that blacks are uniformly disadvantaged in socio-economic status, feel victimized, and that they disagree with whites on almost every issue. As Banfield points out, "For the race leader there is everything to gain and nothing to lose by treating all problems as if they derived solely from the racial one." By denying that class/cultural differences exist and are important in the black community, as Kenneth Clark has recently done, and by minimizing the gains made by the black middle class, black elite spokesmen also contribute to the stereotyping of blacks as poor, uneducated, unemployed, and dependent. The fact that a majority (70 percent) of blacks are not living below the poverty level, but are working, supporting families, paying taxes, and getting more education (just as are most whites) is publicly ignored. Instead we are likely to be told, as Julian Bond recently proclaimed, that "black Americans, in relation to whites, are worse off than we were the year Martin Luther King died, and in some ways worse off than when he was born almost a half century ago." This characterization by national black spokesmen of all blacks as one-and-the-same perpetuates a negative image of blacks and serves as a fundamental barrier to residential and social integration. Very few middle-class persons would jump at the opportunity to live next door to, and send their kids to school with, members of any

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group whose media-designated leaders constantly characterize their compatriots as lower-class, poor, uneducated, and dependent.

A substantial number of blacks feel resentful toward the underclass.[2] There is widespread belief among the black working and middle classes that welfare recipients are deliberately avoiding work—70 percent in our poll agree that "most people on welfare could work but don't want to"—and an even more widely held conviction that "all able-bodied people on welfare should be required to work" (85 percent). Many working- and middle-class blacks also reject the idea that "people who work should be taxed to support able-bodied people who don't work." As housing for middle- and working-class blacks becomes more available, enabling them to move out of ghettos in greater numbers, the psychological distance between more affluent blacks and the lowest classes should increase even more.

Not only is the characterization of blacks by the national black leadership out of touch with the black community, but elite views on important issues diverge from the views of black non-elites and are perceived by many as detrimental to race relations. Evidence on the lack of congruity between black elites and non-elites is revealed in a *Washington Post*/Harvard-Center-for-International-Affairs poll carried out in 1975 on attitudes of leadership groups toward quotas and merit. Seventy-four percent of the black leaders queried supported the idea that "quotas in school admissions and job hiring should be used to insure *black* representation," a figure that contrasts sharply with the views of black non-elites. The divergence in opinion between the national black leadership and black non-elites is also apparent on the busing issue, a policy national black elites support enthusiastically, but which most blacks not only reject but feel makes things worse.

The national media tend to perpetuate notions of racial division and black homogeneity of opinion and socio-economic status. For example, a December 23, 1977 *New York Times* headline read: "Black America's Holiday Mood: Gloom, Suspicion, and Pessimism"; but the story was in fact little more than the opinions of several black journalists and a handful of academics. When the media is interested in black commentary on black progress they tend to turn to these national elite "spokesmen," people whose thinking is at odds with a substantial portion of non-elite views on the same sub-

[2] This tension flows in both directions. As the looting during the 1977 New York City blackout demonstrates, members of the black middle class are as likely as whites to be targets of black underclass violence.

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ject. What's more, these black elites, like their white counterparts, tend to be disdainful of the values of the working and middle classes, and, by neglecting to note their progress or views, surely make that progress all the more difficult.

It is no accident that Republicans are now courting this growing black constituency, or that the Republican National Committee invited Reverend Jesse Jackson to address it. For as black social and economic conditions continue to become more varied, there will be greater diversity as well in black political affiliation and voting habits. As things now stand, the interests and aspirations of of working- and middle-class blacks have yet to be spoken for.

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The day-care debate: a wider view

SHEILA B. KAMERMAN & ALFRED J. KAHN

AFTER many years of controversy, day-care legislation in Washington is dead, at least for now. Congressional support has evaporated because the new forces needed to offer political aid and fresh arguments have not emerged, leaving the debate stalemated. But perhaps the principal reason for the deadlock is that the issue has been cast in the wrong terms, making any consensus impossible. Day care must be viewed as only part of the response to major changes in work and family life in this country, not as an autonomous issue. The questions these changes raise go well beyond day care, though to understand them we must first look at day care itself in some detail and explain what is wrong with the conventional debate.

The conventional question is: How should young children be cared for during the day when both parents (or an only parent) work outside the home? Scholarly and popular articles and government-sponsored studies, as well as the literature and Congressional testimony of professionals and interest groups, are based on inaccuracies, myths, ideology, and ignorance or denial of reality—all of which confound efforts to understand the issues. These errors manifest themselves in the five major arguments against day care.

1. *"There is no significant demand by parents for formal child-care programs."* We have been told that "four out of five American

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children are cared for by their mothers during the day" (Barry Bruce-Briggs, "'Child Care': The Fiscal Time Bomb," *The Public Interest,* Fall 1977), or that when subsidized child-care programs are available most eligible parents do not use them (Suzanne H. Woolsey, "Pied-Piper Politics and the Child-Care Debate," *Daedalus,* Spring 1977).

Our position is that there *is* an effective demand for child-care programs but that the nature and extent of the demand varies according to the age of the child. While there are no good data on how and where all children of different ages are cared for during the day, the evidence suggests there is a separate and distinctive pattern for children aged 3 to 5, as contrasted with younger children. Since most day care in this country is for the 3-to-5 age group, and most discussions of day care focus on its provision for this age group, this pattern has immediate significance.

Of the 9.7 million 3-to-5-year-olds in 1976, over 49 percent (4.8 million), according to U.S. Census reports, were enrolled in preprimary schools—either nursery school or kindergarten—representing an increase of over 50 percent during the last decade. Most of this increase is in nursery-school enrollment for 3- and 4-year-olds, which has jumped by 120 percent since 1967 (from 14 percent to 31 percent). In contrast, enrollment of 5-year-olds increased by about 25 percent, from 65 to 81 percent. In addition to these children in preprimary programs, another 11 percent of the 5-year-olds (366,000) were attending primary school by 1976; in addition, about one-third of the nearly 1.5 million children in center or family day care also attend some type of school. In short, for many children prekindergarten or nursery classes and day-care centers or family day care are "packaged" for an all-day plan. Using a best-estimate unduplicated count we get a total of nearly 6.2 million children aged 3 to 5 participating in some form of school or out-of-home day-care program, *representing about 64 percent of the age cohort.* The overwhelming proportion (59 percent) are in a formal school or center program.

Clearly, there is a demand for these programs. It is also worth noting that demand is not confined to working mothers; half of the children attending preprimary school are from families with the mother at home. However, it is nonetheless true that far greater use of child-care programs is made by working mothers than by others. For example, 75 percent of the nursery-school children with working mothers attend a full-day program.

Thus, for various reasons, a very substantial number of parents

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want and use out-of-home, group programs for their children once children reach about age 3. Given the fact that most programs for 3-to-4-year-olds are private, costly, and beyond the reach of many families, it seems highly unlikely that the demand for such programs has been completely satisfied. Any subsidy that provides either the service or financial aid to users could open up usage to still more families. In fact, since families with working mothers do use such facilities heavily, while significant numbers of such women still do not turn to these programs for 3-to-4-year-olds, it is a reasonable hypothesis that cost factors suppress existing demand. At least this conclusion is far more reasonable than the assertion that almost everyone prefers informal care.

It is also worth noting that, contrary to some recent analyses, most mothers—and especially most working mothers—want more than just a baby-sitting arrangement when they seek child care. This preference for an educational-developmental program shows up in attitudes expressed in surveys, in the existing utilization patterns, and in the positive correlation between the education of the mother and the enrollment of children in nursery school. Given the trend toward increased education for young women, it seems very likely that the future will bring still greater pressure for expansion of preprimary programs.

In brief, there is clearly a demand for out-of-home child-care programs for 3-to-5-year-olds that cover at a minimum the normal school day. The preprimary programs may define a "normal" day to be anywhere from three hours to whatever is the usual length of the elementary-school day—and even longer in some localities. As we have noted, the fact that parents may work longer hours does not justify dismissing nursery and prekindergarten programs from the discussion. A significant amount of such care (29 percent) is all day. In addition, some mothers work part-time; many two-job couples arrange their shifts in such a manner that part-day child care is adequate; and, many other families add a center-day-care or family-day-care arrangement to the nursery-school or preprimary class in such a way as to assure that their children receive the coverage they need.

Nor is there any reason to accept the artificial distinction between preprimary programs and day care. Most parents make no such distinctions and employ one label as readily as the other. The same is true for child-care providers, who may describe what they offer as a "child-development center," "child-care center," "playschool," or any of several other terms—or may employ the conventional "day

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care" or "nursery school." Even Head Start is sometimes considered as part of day care, at other times as preschool.[1]

The divisions among nurseries, public prekindergartens (for 3- and 4-year-olds), and center day care—all serving the ages 3 to 5—have to do with history, politics, organizational turf, and professional prerogatives, not with substance and not even always with funding streams. The differences in programs and kinds of staffing within each type are as great in many localities as the differences among types. And why not? All these programs and staffs draw upon identical theories of child development, their goals reflect the same society, and they are called upon by parents to fulfill the same range of functions.

Other age groups

In contrast to the 3-to-5 age group, however, a somewhat different and less clear picture emerges of child care for children of other ages, younger and older. There are no data yet available to provide the basis for even an informed guess as to the nature and extent of the demand for care for children under age 3. Indeed, although more than 35 percent of the mothers of children under 3 were in the labor force last year, and 44 percent (4 million) of the children of that age group had mothers who worked at some time during the year (two-thirds worked full time), we have very little real knowledge of how these children are cared for. The best estimate is that 27 percent of children under 3 receive a significant amount of non-parental care, and that about half of those (13 percent of the age group) are cared for by relatives. Especially relevant is the fact that 10 or 11 percent (937,000 children) of the age cohort is in family day care or center care, much of it all day.

There is a similar lack of information about how children are cared for when they attend school and their parents' work day does not coincide with the school day, or when school holidays and work holidays are not the same. For those women working part-time this may not present a problem, but two-thirds of all employed women do work full-time. Some parents may deliberately work different shifts in order to minimize the need for special child care. Some parents might view children 10 years old and older as able to care

[1] Not long ago Beverly N. Feldman wrote a long "information piece" for parents in *Los Angeles* magazine called "The Nitty-Gritty on Local Nursery Schools." Responding accurately to public definitions, she included in her directory everything from "education" and "child-development" centers to Salvation Army day care and a series of nursery schools and preschools.

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for themselves. In short, we would assume that there is both a need and significant demand for child-care services on the part of parents of children under 3, as well as on the part of parents of school-age children, at least until the children have reached ages 8 or 9. But thus far a completely accurate quantitative assessment is impossible.

Unrealistic objectives

2. *"Child-care programs are ineffective and have failed to achieve their specified goals."* Arguments of this sort are much more varied, since each individual or group claiming the programs are weak or have failed assumes them to have had different goals. Among the so-called "failures" of day care are that it does not assure the labor-force participation of mothers with young children or, on the other hand, that it provides an incentive to work for women who really should be home with their children. Still others claim that it does not help reduce welfare rolls, that it does not provide enough jobs for low-income women, and that its effect on cognitive development is either negligible or short-lived. But the basic problem with all these criticisms is that the goals they suggest are inappropriate. Burdening child-care programs with a series of objectives having to do with modifying parental behavior is as improper as expecting them to compensate for other inadequacies of social policies, from health care to unemployment.

Preprimary programs are clearly attractive and desirable to many. Those people who can afford the service purchase it in large numbers, and those who cannot ordinarily afford it seem to use it when it is free or inexpensive. Even parents who are not working are increasingly placing their children of this age in such programs. Working parents behave the same way, when they can. Clearly these programs are doing what parents want them to. The failure to demonstrate precise, measurable, lasting, positive effects may have to do more with the choice of what to measure or the inadequacy of existing measurement techniques than with the actual results. Unfortunately, there are, for example, still no reliable social-competence measures for children of this age.

We are not arguing that no program should be assessed for its effects as a compensatory program. After all, that is what Head Start is. But the bulk of day care in the U.S. is *not* Head Start and should not be evaluated as if it were. Were we as a society to apply to our elementary-school system the yardsticks introduced into the

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day-care debate, we would abolish the existing program. But no one seems to be proposing that, whatever the schools' problems.

As for getting women off welfare rolls and into the labor force—obviously, the availability of jobs is far more important than the availability of child-care arrangements. After all, despite the current high unemployment rate, 49 percent of the mothers of children aged 3 to 5 worked last year. The real problem continues to be the shortage of jobs, the inadequacy of training and education, and finally the problem of low wages in those jobs which most women are able to obtain. But when women off or on the welfare rolls seek work, the question is what kind of child care they can obtain and what responsibility society has, if any, to assure that good care is available at a reasonable cost.

3. *"Child-care programs undermine family values, interfere with family prerogatives, and they are bad for children."* It is particularly difficult to give credence to this argument—to understand it, let alone support it—when close to two-thirds of an age group is already participating in these programs because their parents either think the experience good for them and consonant with their values, or because they view the choice as reasonable, given the alternatives. Further, we find substantial use of child-care programs even for children whose mothers do not work. It has yet to be shown that family values have been eroded anywhere by child-care arrangements, whether in nursery schools, centers, or in family-day-care homes. And the parents themselves, insofar as we have information, are overwhelmingly positive about group programs. These facts suggest that the objections are raised by a vociferous minority who are out of touch with how the majority of parents feel and behave. These critics seem both to want day care to get AFDC mothers to work and not to want too much day care, lest other mothers also decide to work!

A very brief look at the experience of countries with more extensive preprimary programs than ours is instructive. Although the conventional wisdom is that it is only in the Eastern European countries, or perhaps Sweden, that one finds extensive child-care programs, the facts are otherwise. Sweden has proportionately less child-care coverage than the United States. Sweden is attempting to expand child care at a rapid rate with public subsidies, but neither it nor any of the Eastern European countries begins to compare in coverage rates with some of the countries in the West.[2] France, for ex-

[2] For a fuller description of these programs and the related data, see our *Social Services in International Perspective,* U.S. Government Printing Office, 1977.

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ample, the bastion of "family centeredness" and individuality, has the most extensive public preprimary school program (*école maternelle*) of any country in the world. About 95 percent of the 3-to-5-year-olds attend such programs, including almost 100 percent of the 4- and 5-year-olds, over 80 percent of the 3-year-olds, and even 28 percent of the 2-year-olds. And almost all of these children are enrolled in the free, voluntary, public-educational program open for children aged 2 to 6. (Many other 2-year-olds are in family day care and *crêches.*) Belgium has almost as many children participating in its preschool programs; Israel includes almost 90 percent of the age group in either preprimary or primary schools; the Federal Republic of Germany has provision for over three-quarters. In none of these countries are parents viewed as any less autonomous because their children attend such programs. Several are characterized by a family life perhaps even more intimate and central than ours. In a number of these countries, the child-care programs have been developed, expanded, and supported as part of a national pro-family policy.[3]

Recently there has been considerable criticism of the alleged potentially ill effects of separating infants from mothers. (See, for example, Selma Fraiberg's *Every Child's Birthright: In Defense of Mothering,* which reflects her opinions and disregards the weight of contrary research evidence.) The growing participation of mothers in the labor force will undoubtedly increase the attention given this problem. But we would emphasize that unquestionably there are different needs for mothering depending upon the age of the child, that there is really no certain knowledge as to the effects of varying periods of separation on children of different ages, and that in any case no one has proposed that mothers surrender their own judgment as to what their children require. Child care is an option, not an imposed requirement, and where this option has been more widely exercised it is difficult to see how it has damaged the family or the child.

Meeting costs

4. *"Child-care programs are too expensive; indeed, they represent a 'fiscal time bomb'."* Critics claim that the projected costs of day care—both per-child costs and the aggregate costs of a national program—are exorbitant. Others say that it is irrational to provide

[3] For details, see our *Family Policy: Government and Families in Fourteen Countries,* Columbia University Press, 1978.

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day-care subsidies so that AFDC mothers can work, when their earnings will not be much more than the cost of day care for one child and nowhere near the cost of caring for two children. Still others cite as arguments against child-care programs the expense and inequity of subsidizing those who are primarily secondary earners, while many protest the apparent unfairness of burdening all with the costs of caring for the children of those who choose to utilize day-care facilities.

Undoubtedly, costs for child-care programs are an important consideration in setting policy and in developing programs. Yet analyzing costs is a complex matter, and discussion of them is often imprecise and heavily value-laden. In this area as well, data are unreliable; most cost figures are presented without any indication of what is included in or provided by a specific amount of money. Since approximately 60 to 75 percent of the costs of a child-care program are attributable to staffing, the number and qualification of staff have an immediate effect on the costs. In addition, however, there are the costs of supplementary services, such as health care and psychological counseling, which may not be essential for each center and should not be included in projecting operating costs of each program—though they often are.

Many of the estimates used in public debate suggest that $3,000-4,000 per child per year must be spent to achieve "quality" child care. Whether or not this is too much is a separate issue. What is significant is that it is very hard to obtain any detailed breakdown of what this figure means, let alone whether it is accurate. A recent national survey by Abt Associates, for example, concludes that typical costs are actually lower, whether the care is non-market or market, regulated or not.

Estimates of the cost of a national program are also confused. These estimates rarely take account of some mother's desire for part-day care. They usually project after-school care for 6-to-14-year-olds although few children over 10 would participate in any such structured daily programs. (Most would prefer sports, hobbies, visits with friends, or just going home by themselves, and most can take care of themselves at that age.) The professional day-care groups reinforce the exaggerated estimates by assuming that all affected parents of 3-to-5-year-olds need and would use full-time center day care, thus ignoring the large numbers of children already in preprimary programs who would need only supplementary care. The cost estimates also often assume a total program immediately put in place rather than one developed over time.

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A new perspective on costs

Even if we had accurate cost estimates, however, costs would undoubtedly appear forbiddingly high to many. And yet we would urge a number of considerations on those who would view subsidized child care as a ridiculously expensive alternative to other arrangements such as welfare. Facilitating employment of an AFDC mother does not just mean balancing the costs of child care against the costs of public assistance for the time the child is in day care. It may also assure a kind of "mainstreaming" by helping a woman enter the labor market and begin to develop the habits, skills, and attitudes of a working adult. Day-care opponents or cost-benefit analysts would do well to consider long-term effects, such as that, given both suitable employment and a child-care alternative, mothers of AFDC children might be expected to work when children reach the age of 3.

In addition, as more and more children aged 3 to 5 are enrolled in preprimary-school programs, denying that experience to a child who may already be deprived may result in still greater exclusion from the usual experiences of childhood and from part of a normal developmental process. Under these circumstances, a very different perspective on costs may begin to emerge. When making AFDC policy, why not ask about mothers *not* on AFDC, about their work and child-care patterns once the children reach age 3? We are troubled by the fact that President Carter's now-stalemated welfare-reform proposals assume a job offer (and for just a part-time job at that) only to mothers of children aged 7 to 14!

For those who view child-care programs as subsidizing secondary earners we would note that 13.6 percent of all U.S. families are now one-parent female-headed families; and that in almost 3 percent of the husband-wife families only the wife works. Husbands and wives are both wage earners in close to half of the 47 million two-parent families. And some 13 percent of working wives earn more than their husbands. Among all families where the wife works full time, all year, her earnings represent 39 percent of family income. Moreover, in low-income families the wife's earnings produce a still greater portion of family income. For these families the ability of the wife to continue working may make the difference between an adequate or inadequate standard of living. For many others, the wife's earnings are essential to achieving a more desirable, though by no means affluent, standard of living.

Finally, there is the question of equity. Is it fair to expect those with no children or those who remain at home to care for their own

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children to carry the tax burden involved in subsidizing the care of other people's children? This is a far more profound question and one intimately related to the question of what it is one perceives child care to be. Though we will not address it here in detail, it is a crucial question that informs our concluding section.

5. *"There is no need for government to operate or subsidize child-care programs. If there is any need for a national child-care policy, the response should take the form of a demand subsidy rather than a service program."* A "demand subsidy," such as a larger tax credit or a voucher, which allows all parents to express their preferences in the market (just as those with higher incomes now can), is one possible component of a stepped-up American child-care policy. Yet we should not be too hasty to limit ourselves to this now-popular approach. A demand subsidy can be effective if the market is able to respond to demand quickly, and if an increased supply of child-care resources of satisfactory quality and reasonable cost can become readily available. But will this be the case with child care? Note that Medicaid, Medicare, and nonprofit and profit health-insurance programs—all "demand subsidies"—have contributed to the enormous inflation of medical-care costs. If we subsidize demand without assuring some direct supply of services and some effective control of professional and service monopolies, we may experience a similar inflation of child-care costs—one that would hit middle-income families hardest. In any case, we had best find out something about the care given the 4 million children whose parents took advantage last year of the child-care tax credit—and who can claim deductions for child care given by grandparents as of January 1, 1979.

Changing work patterns

At this point one might say: "All right, so there is more interest in group programs than we thought, and some of the conventional arguments both for and against day care are wrong. And we see why you prefer the term 'child care' to that of 'day care,' so as to include nurseries and prekindergartens. But the size and nature of the overall demand is still unclear. I still see no reasons for supporting a big new social program, even if some parents want it."

We are urging new terms for a debate, not a specific new social program. Major social changes suggest the need for a different perspective—and of paramount importance is the growth in the number of employed women, especially married women with young children.

Eli Ginzberg, the economist, is among those who have suggested

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that the large-scale entry of women into the labor force has been "the single most outstanding phenomenon of the 20th century," with implications for every aspect of our daily lives. Yet thus far relatively few people are sufficiently aware of the dimensions of this phenomenon and its projected trends, let alone their implications.

It is not that women have never before been workers: Any reading of social history for the 16th to 18th centuries shows otherwise. But in the past, women worked—as men did—in non-monetized work at or near home, in farming or (later) in home-based cottage industry. Only with industrialization did home and workplace become separated. And only for a very brief time in history, from the mid-19th to mid-20th centuries, was there a small stratum of middle-class and (later) working-class women who remained at home, and —apart from child care and housework, with which many had assistance—at leisure. In short, the "modal" family, with the father at work outside the home, supporting the wife as a full-time homemaker and mother (and consumer of cultural advantages), is a relatively recent phenomenon growing out of particular economic and social circumstances in modern society. The pattern spread for a brief time to many other groups (and in part explains AFDC policy), but since World War II it has begun to break up once again.

One might debate the weighting of the "causes": labor shortages because of the war or because of economic growth, the push for equality, or the desire to share a higher standard of consumption. In any event, the change has been dramatic, large-scale, and probably irreversible. Women "returned" to work, but now there is a physical separation of workplace and home. This presents a new problem: How are employed women to cope with the responsibilities of child care and child rearing when they are away from home for a significant portion of each workday? The struggle of married women to have the right to hold paid employment was won only in the middle of this century. Now we are beginning to experience the push of employed women for the right to marry and bear and rear children. And as more and more women enter the labor force, anticipating permanent employment at the same time as they expect to marry and have children, the concomitant effect on men's lives ought not be overlooked.

Since 1950 the participation rate of women in the labor force has increased from about one-third to almost one-half (48.1 percent). At the same time, the participation rate of men in the labor force has decreased from 86 to 78 percent, primarily as a result of earlier

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retirement. Participation rates for men between the ages of 25 and 54, the peak years of family responsibilities, are a little above 90 percent. Among women, 67 percent of those in their early 20's and close to 60 percent of those aged 25 to 54 are in the labor force. This trend is expected to continue, with still more women entering the labor force during the next decade, and a projected participation rate in 1990 of 67 percent for those aged 25 to 54.

The first major increase in female participation in the labor force after World War II was concentrated around women aged 45 to 59 who had largely completed their child-rearing responsibilities. Since the mid-1960's, however, the greatest labor-force increases have occurred among women under age 45, especially married women living with their husbands. Thus the proportion of married women in the labor force who had school-aged children nearly doubled between 1950 and 1976, and the participation rate of wives with preschool children tripled.

Since 1970, the greatest labor-force increases have occurred among married women under age 35 with children under age 3. Furthermore, a long-term pattern in which large numbers of women withdrew from the labor force in their 20's to rear children has apparently ended. Close to 67 percent of 20-to-24-year-old women were in the labor force in 1977, up from 60 percent in 1970; and for the first time there has been no significant decline in labor-force participation for women aged 25 to 29, the prime child-bearing years. This suggests that women have increased their commitment to permanent employment and that their work behavior is increasingly similar to that of men.

Finally, we would note two more developments which may be predictive: First, among women aged 25 to 54 the effect of higher education on labor-force participation is particularly pronounced—the participation rate for women college graduates is over 70 percent. Given the rapid and steady increase in the educational attainment of women since 1950, there are likely to be higher overall participation rates for women in the future. Second, since women with one or two children tend to work more than those with three or more, the long-term trend toward having fewer children should contribute still further to the growth of the female component in the labor force.

In short, women are working in growing numbers and the differences both between the labor-market behavior of mothers and other women, and between women and men, is decreasing. Moreover, responses to national surveys regarding women's attitudes toward work indicate that they, like men, view work as central to their

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identities and would continue to work even if they could live comfortably without earned income.

Nevertheless, the economic motives are strong. Given both the growth in one-parent, female-headed families (whose labor-force participation rates are, of course, much higher than those we have given for married women) and the growing significance of wives' earnings to overall family income, especially in low- and medium-income families, the economic motivations behind women's employment are readily apparent. The fact that families "could manage" without a second income by the standards of an earlier era is irrelevant when the aspirations and consumption habits of families at all income levels have increased tremendously.

The society has changed, and the two-earner family has emerged as the dominant family type—women are in the labor force and they will remain there. Indeed, the likelihood is that more will enter. Their labor is required to support a family, to maintain a standard of living, to enable them to participate fully in society, and to meet the society's needs for a productive labor force.

But now, what about the children? They are valued and needed both by the adults who want and enjoy them and the society that depends upon them. They represent societal and familial continuity and immortality, a source of personal and private pleasure and joy for parents and immediate family, and—in a broader sense—the future labor force and citizenry, the producers of the goods that pay the pensions of the elderly, and the parents of the next generation. The full implications of these facts are seldom probed in a society content simply to remember on ceremonial occasions that "children are our greatest resource"—and then to go on to the next bit of business.

Children are both "consumption" and "investment" goods for families and societies. The individual decision to have a child is influenced by complex psychological, social, and economic considerations not fully understood. Yet few would deny that economic factors do play a significant role: the costs of bearing, rearing, and educating a child, as well as the income foregone if a parent remains home or withdraws from the labor force. Social policy affecting children must be concerned with both the "quality" of our children and the privacy and diversity of the family institution. Failure to act, or enacting policies formulated without regard to their possible effects on families and children, will in the end have effects no less significant than will custom-tailored policies. Wise decisions are more likely to be made if the issue of children and families is raised

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and brought out into the open. Of course, because of differences over values—and the potentially explosive and divisive nature of such differences—many would like to skirt the question. But it cannot be avoided.

Policies for parenting

Thus the specific problems raised in the debate over child care lead us inevitably to a more general question: *How are adults going to manage the successful care and rearing of future generations of children while spending a substantial portion of time at work away from home?*

There are some who would say there is no cause for concern: Adults will manage the same way they always have; women will bear and rear children and will somehow take care of them no matter what else goes on, and besides, public action will cause more harm than good. Similar arguments were used in the past against public elementary education, public sanitation, and social security programs. Perhaps they are right this time. Perhaps nothing else need be said. But we believe that the changes are too significant for such an outlook, and that it would not be wise to ignore the potential consequences of these changes for children, women, men, families, and society at large. This need not mean a governmental "takeover," but rather a careful consideration of supports, incentives, and governmental and family cooperation to sustain our institutions and reinforce core values.

Just as in the early and mid-20th century we began to realize that there was a social responsibility toward the aged, the dependent survivors of a worker, and those temporarily unemployed through no fault of their own, so American society should now begin to acknowledge its responsibility to those who carry the burden for rearing the next generation. Loss of income because of childbirth is as much a "normal" risk for families dependent on the income from two wage earners in an industrialized society as was the loss of the sole breadwinner in earlier years. Bearing and rearing children are important contributions to the long-term productivity of society, but they are costly contributions and should be recognized as such when entitlements to retirement pensions or other categories of benefits are assessed.

Raising the question of how employed adults can marry, bear, and rear children successfully suggests the need for a wider policy discussion about social responsibility than one which focuses only

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on how children are cared for during the day. Such an exploration would have to begin to consider choices having to do with income support, social-insurance benefits, and modifications in work hours, as well as child-care programs. But a society that has discovered the need for public education and social insurance, and has recognized that they are compatible with the political and economic institutions of a democratic nation with a mixed economy, should be able to discuss such possibilities comfortably.

We know that these issues will arise in an informed U.S. debate because they are elements in the policy repertoire employed elsewhere in response to the new circumstances affecting families. Several approaches are already in use in many other countries.

1. *Maternity leaves or "parent insurance."* Temporary loss of income due to childbirth and subsequent convalescence can create a major problem for a family dependent on a second income for its standard of living. Moreover, anxiety about coping with an additional financial burden often adds unnecessary stress to what is already a stressful period. And pressure on women to return to work immediately after childbirth may harm them or their children.

Almost every other industrialized country already provides some form of cash maternity benefit (usually related to health insurance), and two countries also assure fathers an opportunity for sharing in this "parent insurance" benefit. For much of Europe, this means that an employed woman can withdraw from the labor force for at least three months around the time of childbirth, be paid some portion of her normal wages, and have full job protection. While three months is typical, some countries offer more extensive benefits; the Swedish entitlement is nine months. The benefit "package" may include medical coverage and a lump sum given at the time of childbirth, in addition to the paid leave. In Sweden and Norway the entitlement includes the right of parents to share the benefit between themselves so that each parent has some opportunity, if desired, to remain home and care for the new baby for some period. All countries providing this kind of benefit also assure women the right to an additional unpaid leave; usually for about one year, with full job protection and all fringe benefits.

At present, the only comparable coverage in the U.S. is what is provided under private disability insurance that specifically includes pregnancy benefits. Yet less than half of the civilian labor force has private disability coverage that provides benefits for pregnancy and childbirth. To require that all employers provide such coverage would impose a particular burden on industries with a high per-

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centage of female workers, yet clearly such coverage is valuable from the point of view of maternal and child health as well as the economic well-being of the family generally. The policy challenge is to invent "maternity" or "parent" insurance even though the U.S. lacks the obvious vehicle—a public program of cash sickness benefits.

2. *Child care as a service.* We mentioned earlier that the overwhelmingly dominant pattern in Europe is to provide child care for children aged 3 to 5 in a preschool or preprimary-school program within the public educational system. Such programs are voluntary, free, cover the normal school day, and have expanded phenomenally over the past decade in most countries. They are viewed as essential socialization and development experiences for children regardless of whether their parents work.

Indeed, in all countries other than the Anglo-American, the local equivalent of the term "day care" is used only to describe care of infants and toddlers—children under the age of 3. From then on most children attend the preschool, which fulfills a child-care function as well as an educational and developmental role. Interestingly enough, in all these countries (and in contrast with our AFDC policy) women are expected to work, if there is economic need, when a child reaches age 3—though child-care programs developed independently of women's labor-force-participation rate.

The need is everywhere acknowledged for programs to supplement the normal school day for young children whose parents' working days go beyond school hours, but few countries have managed any systematic program development. Sweden has initiated a program of "leisure-time centers," where children can come after school, often sharing in activities with younger children or acting the role of older siblings. Israel has a program of youth clubs and is experimenting with a longer school day for some children. France encourages schools to remain open to provide supervision for children whose parents are working. In some large cities, at least one school in each district must provide such a service, though care is largely custodial. The French are hoping to develop more enriched programs shortly.

All industrialized Western countries, including our own, recognize the problems of "latchkey children," who are locked in apartments and houses without any adult supervision. Yet we in the U.S. still refuse to discuss developing a system to care for the very young school-aged child when schools are closed and parents work.

3. *Caring for infants and toddlers.* The question of infant and toddler care is currently being debated throughout Europe, yet there

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is little discussion in this country. Since European countries assume that most children will be cared for by a mother (or father) home on paid leave—or some combination of paid and unpaid leave—until the child is somewhere between 6 months and 1-year old, and since an increasing number of preschool programs are already considering admitting children at age 2½, their child-care debate is beginning to concentrate on children ranging in age from 9 months or 1 year to 2½ years. These countries have chosen a range of policies including day-care centers, family day care, extended cash benefits to permit women to remain at home until the child is 2 or 3, a shorter work day without loss of pay for parents of very young children, or some combination of all of these.[4] There is a reasonable basis for arguing that a generous grant to allow employed parents the option of remaining at home until a child is 3 years old, as an alternative to developing extensive day-care arrangements, is good public policy. Or that a combined center-care and family-day-care system will meet a country's needs if supplemented by parental right to remain home from work if a child is ill. And whatever the specific policies, they should provide options that recognize differences among families, and their needs and preferences.

This is not the place to provide details or to suggest an American program. The formal criteria for choice relate to effects on children and families—as well as costs. In different countries choices have been made on the basis of labor-market, demographic, political, and economic considerations—but everywhere there also is serious and sincere concern with families and children. We have a right to expect as much here.

4. *Income-maintenance policies.* If there is a desire to alleviate the financial burdens of families rearing children (whether or not mothers work or use child-care services), other policy possibilities might be considered, such as family or children's allowances, tax credits, and social security entitlements. Every industrialized country other than the U.S. provides a family allowance—a cash grant of varying amounts given to a parent based on the presence of a child in the family. The grant is explicitly designed to offset the financial burdens of child rearing. In most countries this benefit is awarded for each child; in some, it begins only with the arrival of a second. It may be large or small, tax-free or taxable. It occasionally but not generally is linked to a means test. Extensive research and literature on the effects of these benefits in several countries indicates

[4] Our current research involves a six-country analysis of alternative policy packages.

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that there is no discernable effect on birth rates; indeed, those European countries which have had such a policy for 30 or more years have fertility trends and birth rates very similar to our own. But the beneficial effect on the living standards of low-income families in a country such as France, which provides a substantial benefit, has been significant.

Other possible U.S. strategies might include a tax credit for each child as an alternative to a family allowance and to our present deduction for dependents, or cash subsidies for purchasing child care. Employment-related benefits might also be considered, such as providing employees with a certain number of days of paid leave to care for an ill young child at home, or a flexible work schedule that would make it easier to mesh the home and work timetables of parents who both work.

We have not attempted in this article to present a full list of child-care alternatives, nor have we presented a preferred program for the United States. What we have done is illustrate possibilities, for our intention has been to move the discussion beyond day care to child care—and from child care to parenting. In the end, the choices we make will depend upon what we as a society want to achieve for families. As we approach the next decade, we are entering a period of unprecedented expansion in the number of adults at the ages of peak work and family responsibilities. And more and more of them will be experiencing the pressures of both sorts of duties. Inevitably, they too will enter this debate. It is unlikely that they will find the present situation acceptable.

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How easy votes on social security came to an end

MARTHA DERTHICK

WHEN Congressman Al Ullman, chairman of the Ways and Means Committee, presented the Social Security Amendments of 1977 to the House of Representatives, he warned that there would be no more easy votes on the subject. What political calculus lay beneath Ullman's elliptical remark? What political watershed did he believe the social security program to be crossing?

The great popularity of social security has been one of the axioms of our public life. A decade ago, in his *Newsweek* column, Paul Samuelson pronounced it the most successful program of the modern welfare state. "It is a remarkable fact," he wrote, "that both expert and layman will agree on this judgment." About the same time, Milton Friedman ruefully complained that social security had become a sacred cow no politician dared to criticize. For decades Presidents of both parties recommended and bipartisan majorities in Congress passed repeated enlargements of the program. When these enlargements invaded the private sector in a distinctively new way, as did disability coverage and Medicare, conflicts were intense and votes close, but those innovations might not have passed at all had they not been presented as increments to a widely approved social security system.

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Today things are different. Congress was reluctant to act on the amendments of 1977, which revised a technically faulty benefit formula and raised both taxes and benefits. The House adopted the procedural rule to allow action on the amendments by only three votes, and the amendments themselves by only 26 votes. A Harris poll showed the public evenly divided over the bill—43 percent for and 43 percent against. And no sooner had the amendments passed than a taxpayers' revolt erupted, even though the bill imposed no new taxes until 1979. (Tax increases that went into effect in 1978 had been scheduled under earlier law.) Even elite opinion was suddenly antagonistic. *The New York Times* complained that social security had been evolving without public debate into a "national pension system instead of what it was originally conceived to be—basic social insurance against unanticipated financial need," and called for a "restructuring"—meaning, incredibly, a reduction—of benefits.

That social security suffered a "fiscal crisis" in the mid-1970's is well known to even the most casual observers of public affairs. Sophisticated observers can probably explain why: Inflation caused benefits to increase faster than expected; unemployment caused revenues to fall behind what was expected; claims for disability payments were rising much faster than expected; a faulty benefit formula enacted in 1972 exaggerated the deficit in an irrational way, particularly over the long run; and a falling birth rate was changing the demography of the country with adverse future effects on the program. Faced with the immediate, actual deficit that appeared in 1975 (when expenditures exceeded income by $1.5 billion), as well as a long-range, hypothetical deficit that was first predicted in 1973 and then grew alarmingly worse with each succeeding annual report, Congress was forced to raise without warning a large amount of fresh revenue. For the first time, Congress had to vote for a social security bill that was *primarily* a revenue-raising measure. Though it contained some benefit increases, it was reported by the press, perceived by the public, and experienced by the politicians as a tax bill. No wonder that Congress found the vote unpleasant: In 1977 the once-sacred cow required a lot of hay to produce a little bit of thin cream.

But there is more to the program's new political situation than that. Stresses might well have appeared even if none of the unexpected events of the 1970's had occurred. In fact, the fiscal crisis of the 1970's obscured what may be the most important single political fact about social security: *The costs were initially deceptively low,*

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they have been rising steadily for a long time, and they would have continued to rise steadily even if the fiscal crisis of the 1970's had never occurred. Very likely, these rising costs would at some point have begun to erode the program's popularity, and perhaps were already doing so even before the "crisis" developed.

Delayed costs

We do not yet know how popular social security is, because delayed costs are characteristic of the program. It has always been true that future tax rates in social security were expected to be higher than current rates. The initial tax, which went into effect in 1937, was 1 percent on both the wages of covered employees and on the payrolls of their employers, and this was scheduled by law to rise in steps until it reached a plateau of 3 percent in 1949. By 1950, thanks mainly to a booming economy, the rate was still only 1.5 percent, and a schedule enacted in that year called for it to rise to 3.25 percent by 1970. In 1970, the rate actually stood at 4.8 percent, the result of big interim expansions in coverage (especially disability and Medicare), and was scheduled to rise to 5.9 percent by 1987. Today, following the latest amendments, the rate is 6.05 percent, and due to rise to 7.65 percent by 1990. The theoretical plateau of taxation has remained always on the horizon, from 6 to 21 years away, depending on Congress's latest plan. Meanwhile, the other determinant of the tax burden, the amount of individual earnings on which the tax is imposed (the "wage base"), has also risen frequently. The wages base in 1937 was $3,000; in 1978 it was $17,700.

A public program of old-age benefits in which eligibility depends on tax payments and retirement from work inevitably starts small, in that the ratio of taxpayers to beneficiaries is low for a long time. Taxes are collected immediately, but taxpayers become beneficiaries only gradually, as they establish eligibility through tax payments and then retire from work. In 1950 there were 14 taxpayers for every beneficiary, but by 1970 there were only four. Most of this decline occurred not because the aged proportion of the population was increasing, but because the social security program was maturing.

That the ratio of taxpayers to beneficiaries was at first artificially high did not have to mean that initial tax rates would be artificially low. Congress could have decided to impose taxes at what social security experts call a "level-premium" rate—a rate which would

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have covered the full cost of the program if charged from the beginning. This would have alerted taxpayers right away to the magnitude of the program's cost, but it would also have had depressive effects on the economy and caused the creation of an extraordinarily large trust fund, outcomes that neither liberals nor conservatives favored in the founding years. Congress adopted instead a pay-as-you-go policy, with tax rates big enough to support the *current* program plus a bit to sustain a trust fund of indefinite but relatively modest size. Congress had no taste for charging early taxpayers much more than was necessary to sustain the program.

Aware that the program would be very much more expensive in time, policy makers developed elaborate procedures that appeared to take the future into account and protected them against charges of fiscal irresponsibility. Legislation was accompanied by the financial estimates of a professional actuary, a leading official of the Social Security Administration (SSA), who calculated the long-run costs of the program and any proposed changes. Congress always kept the program in "actuarial balance": Whenever it enacted benefit increases, it also enacted the payroll-tax increases—current and *future* increases—that the actuary estimated were required to pay for them. This imparted the appearance of fiscal prudence to policy making, through imposing tax increases on the voters of a distant future is at best a qualified form of prudence. Besides, no one could be sure that the actuary's estimates were correct. The future tax rates stipulated in the law might turn out to be quite wrong if his assumptions were wrong.

Incrementalism and economic growth

Besides causing the short-run costs of the basic program to be artificially low, the intrinsically gradual character of social security meant that the short-run costs of any incremental increases in benefits were also artificially low, a circumstance that profoundly affected the program's politics.

In a world where consequences are hard to foresee, incrementalism is understood to be a safe and sound technique. Policy makers take a small step or two and then assess the effects of what they have done. But in social insurance this was not the safe and sound technique it seemed, because so much of the experience that mattered could be acquired only in the long run. The full consequences of incremental additions, in the form of more liberal benefits, could not be assessed until the program had matured and the

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potential universe of beneficiaries was fully covered. But because experience in the short run *was* reassuring, liberalizations in benefits were undertaken with relative political ease.

There is another sense, too, in which incremental features of the early program tended to ease its politics. The program began small not just in the sense that beneficiaries were few initially, but also in the sense that only a fraction of the workforce was covered. The program enacted in 1935 applied only to workers in commerce and industry. It omitted the self-employed, employees of governments or nonprofit organizations, and agricultural and domestic workers. By steps, however, virtually all members of these groups were brought under social security, with the exception of civilian employees of the Federal government and a sizeable fraction of state and local public employees. Each extension of coverage prolonged the period of artificially low tax rates. Each brought a fresh infusion of revenue, whereas the corresponding benefit obligations were deferred for some years.

Finally, the politics of the early program was eased by economic growth. As earnings rose, the payroll tax yielded more revenue, and these yields could be used to finance benefit increases without boosting the tax rate. A 14-percent benefit increase in 1952, a 15-percent increase in 1969, and a package of miscellaneous liberalizations in 1960 were financed wholly out of increased earnings without any tax-rate increase at all, and other liberalizations were financed partially in that way.[1]

Policy-making techniques were designed to take advantage of economic growth through the device of the "level-earnings" assumption. The actuary's long-run financial estimates were based on the assumption that earnings would not rise. This assumption was arbitrary and unrealistic, of course. Policy makers knew that earnings *would* rise, but they found the assumption useful nonetheless because it virtually guaranteed the development of technically unanticipated surpluses that they could use to finance periodic benefit increases. On the other hand, nothing in policy-making techniques promised increased benefits in the absence of growth. The actuary

[1] To realize these returns from earnings, it was necessary periodically to raise the wage base, but for approximately 20 years (1951 to 1973), although it rose in absolute terms (from $3,600 to $10,800), the base remained stable in the sense that it covered a more-or-less constant percentage of total earnings in covered employment (81.1 percent in 1951, 81.8 percent in 1973). The amount of covered employment increased as new occupational groups were added, but the proportion of covered earnings that was subject to social security taxation, as represented by the wage base, did not increase.

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(Robert J. Myers, for most of the program's founding years) liked the level-earnings assumption for its prudence. It was a procedure, he once explained to the Senate Finance Committee, that utilized actuarial gains "only after they have materialized." When earnings in fact rose, actuarial calculations were revised to show a surplus in the system—but not before. The level-earnings assumption, though it guaranteed automatic and politically painless benefit increases in a booming economy, provided a margin for error in the event the economy took a turn for the worse.

In any case, throughout the 1950's and 1960's policy makers handled social security benefit increases in *ad hoc* fashion. Election-year action became the pattern in the 1950's, but Congress kept its options open, and in the 1960's acted irregularly, in response to particular combinations of political and economic pressures and opportunities.

The new and painful politics of the 1970's

The foregoing analysis does not take account of all the factors that historically have eased the passage of social security legislation. It ignores the intrinsic appeal of aiding the aged or of providing for one's own old age, as the taxpayer supposed he was doing. It ignores the SSA's longstanding reputation for competent, reliable, client-oriented service, and the extraordinary sense of social mission, manipulative capacity, and technical expertise possessed by its executive leadership in Washington. It ignores the exceptional degree of financial and organizational independence that has shielded social security from bureaucratic rivalries and generalist criticism inside the government. All these are factors which may or may not prove to be enduring, whereas I am concerned with what is undeniably new in the current politics of social security. In this light it is clear that there are at least three reasons why votes are harder now than they used to be:

1. *The system is approaching maturity.* Ninety-three percent of the population over age 65 is receiving benefits.[2] The ratio of taxpayers to beneficiaries is lower than ever, and, as a consequence, individual tax burdens are higher than ever and the ratio of benefits to costs

[2] It should be noted that social security beneficiaries are by no means confined to this age group. In 1977, in addition to the 21.8 million persons over 65 who were receiving benefits, 12 million others qualified, as survivors and dependents, by being disabled, or by retiring from work at age 62. The 33 million beneficiaries constituted 15 percent of the population.

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for new entrants into the system much lower. A worker who entered the system in 1937 and paid the maximum tax for the next 30 years would have paid a total of only $2,673.60 if he retired at the end of 1967. That would have equaled a very small fraction of his benefits. But the worker who entered in 1968 and pays at the maximum rate will have paid $27,512.25 after only 20 years, assuming that scheduled increases in the tax rate and wage base are not changed. The huge windfalls that went to participants in the early program will come to an end, and some high-income workers may pay for more than the cost of their own benefits. The ratio of taxpayers to beneficiaries will continue to decline in the future—from now on, however, more as a result of demographic changes than maturation of the system.

2. *The possibilities for capturing new revenues through extending coverage are virtually exhausted.* Approximately 90 percent of the work force is covered. Congress is suddenly under pressure to bring in the remaining exceptions—10 percent of nonprofit employees, 30 percent of state and local employees, and civilian employees of the Federal government—but it is under better organized and more effective pressure to permit them to remain out. During consideration of the 1977 amendments, the House voted 386 to 38 against covering the remaining uncovered persons, though it instructed the Department of Health, Education, and Welfare to conduct a study of the matter. Coverage may be extended to these groups in the next decade, but if it is, it almost certainly will be on terms that are very favorable to incumbent Federal employees, and that protect their rights in the civil service retirement system. Thus there will be no major relief soon to the system from that source. If and when full coverage of public and nonprofit employees is achieved, the possibility of future windfall gains to the system from extensions of coverage will have been exhausted. Coverage will then be universal.

3. *Policy makers have sacrificed room for maneuver by abandoning the level-earnings assumption and indexing the benefit structure so as to make benefit increases depend automatically on economic events.*

Important changes in policy-making procedures occurred in 1972, when Congress hastily enacted an extraordinary 20-percent increase in benefits. It was extraordinary not so much for its magnitude as for the method of financing: The practice of assuming level earnings was abandoned. The actuary began assuming that earnings would rise at a rate extrapolated from historic trends. This change made it possible to justify the 20-percent increase whereas under the tra-

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ditional estimating methods only a small increase would have been defensible.[3] Together with other benefit increases in the Nixon years, this change produced, in the words of Social Security Commissioner Robert M. Ball, "a new social security program—a program that provides a new level of security to working people of all ages and to their families." Rather than a minimal program providing, in the traditional phrase, "a floor of protection" on top of which other forms of retirement income must be set, it began to provide for many people something like sufficient support—but at a very high cost, of course. Benefit obligations were greatly increased, and the built-in margin for error removed from the program, at just the time such a margin happened to be needed. In 1974 price increases exceeded wage increases, contrary to all recent experience, and though the double-digit inflation of that year soon subsided, there was ample reason to think that inflation would persist at a rate much higher than that to which the nation was accustomed, and that economic growth would be slower. This was precisely the sort of economic dislocation against which the level-earnings assumption had provided protection.

The switch to dynamic-earnings assumptions coincided with, and logically depended upon, another very important change in policy-making procedures. Instead of continuing the method of *ad hoc* increases—which had provided a good deal of latitude in responding to economic and political pressures—Congress in 1972 tied benefit increases automatically to increases in the cost of living. This meant that when the severe inflation of the mid-1970's set in, Congress was committed to keeping benefits up-to-date with price increases no matter how costly this might be. In the event, it proved very costly. Because a high rate of unemployment perversely coincided with a high rate of inflation, a severe and unexpected deficit suddenly developed in the program, contrary to the expectations of policy makers such as Commissioner Ball and Ways and Means Committee

[3] The actuary was no longer Myers, who had left the Social Security Administration in 1970 protesting that "expansionists" were running away with the program, contrary to the policy preferences of the Nixon Administration—which, he made clear, were his own preferences, too. Myers' position as chief actuary became untenable when the Nixon Administration failed to remove Robert M. Ball as Social Security Commissioner, as Myers had more or less publicly been urging it to do. Ball, a career civil servant turned political appointee, who had served as Commissioner in the Kennedy and Johnson Administrations, was held over until 1973. Though it did not trust him, the Nixon White House was afraid to remove him. An administrator of exceptional ability and intelligence, Ball had a host of admirers in the Washington community and powerful defenders both in Congress and in the liberal Republican leadership of the Health, Education, and Welfare Department.

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Chairman Wilbur Mills, both of whom had promised in 1972 that there were no risks in the 20-percent increase—that the system was safely financed for years to come, and would need no tax-rate increases other than those already scheduled by law.

Ironically, the switch to an automatic benefit formula originated with conservative Republicans in Congress, who thought of it as a way of containing biennial, election-year pressures for expansion, and depoliticizing social security to their own advantage. They hoped to get credit for introducing the automatic feature and to deprive the Democratic majority of future opportunities to act. The idea went into the Republican party platform in 1968 and then became the centerpiece of President Nixon's social security proposals to Congress. There it carried despite initial opposition from Mills, who did not want to give up the *ad hoc* biennial increases.

Though the sponsors of indexing did not foresee it, their desire to link benefits automatically to changes in the economy made it politically possible and logically necessary to use dynamic-earnings assumptions in the actuarial projections. Myers had always maintained that he had to use static assumptions because he could not legitimately assume that Congress would raise benefits in the future or guess by how much, and if he could not assume rising benefits, he could not assume rising earnings. This logic crumbled when automatic benefit increases were approved, and Myers' successor as chief actuary, Charles L. Trowbridge, thereupon agreed to use dynamic assumptions. Ball and other liberals were eager to make this change because it would create a big actuarial windfall with which a benefit increase—a *20-percent* increase, as it happened—could be justified.

An automatic formula is still in effect, though not the same formula that was enacted in 1972. That one proved to have very erratic effects under conditions of severe inflation, and was therefore revised in 1977. The new formula ties the benefits of retired workers to changes in the consumer price index, and ties the benefits promised to future retirees to changes in wages, which is a more liberal method.

Future options

In the past, Congress increased benefits at its own discretion, financing them out of windfalls from rising earnings and extensions of coverage, as well as tax increases. Since the ratio of taxpayers to beneficiaries was high in an immature program, tax rates remained

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relatively low for a very long time—and that presumably eased the imposition of any particular tax increase. Under these circumstances, the cost of the basic program was obscured, as were the costs of incremental additions to it.

Today Congress is in a very different situation: It is committed to paying social security benefits to a very large and rising proportion of the population, in amounts which will depend on economic events—the movement of prices and wages—over which it has no direct control. It must raise the taxes to pay for these benefits from a shrinking proportion of the population, with no prospect of windfall gains. Sources of revenue other than tax increases have dried up or been deliberately sacrificed. The prevailing payroll tax rate (6.05 percent on each employee and employer) has attained a level characteristic of a mature program, and is scheduled to go higher (by steps, to 7.65 percent) even if no further benefit increases are enacted. All of this means that it will never again be as easy to vote for incremental additions to the program as it has been in the past.

Policy makers can respond in any of three ways to the new political situation of social security. They can continue to rely on an earmarked payroll tax to finance the ever-increasing burden of the program; they can shift some of the cost to less visible tax sources, presumably income and profits taxes, which is to say "general revenues"; or they can reduce benefits.

The Social Security Amendments of 1977, which passed in December of that year, was the first test of legislative reaction to the choices. Congress declined an invitation from the Carter Administration to shift some of the burden to general revenues and to place the payroll-tax burden disproportionately on employers. Whereas the Ford Administration would have met the deficit by increasing payroll-tax rates, its Democratic successor proposed to meet it by introducing general revenues whenever the unemployment rate exceeded 6 percent and by taxing employers, but not employees, on *all* wages and salaries. Though the wage base would have been increased only slightly for employees, for employers it would have been expanded to cover the whole of their payrolls, breaking the traditional employee-employer parity. The use of general revenues was ostensibly designed to apply only to the "emergency" years 1975-78, but in Congressional testimony Health, Education, and Welfare Secretary Joseph Califano conceded that if enacted it would become permanent.

Congress rejected these seemingly attractive innovations in favor of more of the same. It raised the payroll tax slightly beginning in

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1979 (an increase for 1978 had already been scheduled), and raised the wage base for employees and employers by equal and very large amounts. From $17,700 in 1978, the base is scheduled under the new amendments to go to $29,700 by 1981, thereafter rising automatically in keeping with general increases in average wages. This expansion, added to that which took place in 1972-73, is expected to push the new wage base to 91 percent of covered earnings—far above the level of 81 percent that prevailed in the 1950's and 1960's—a rise which is one of the most significant indicators of the recent massive growth of the program.

Congress rejected out of hand a proposal of Republican members of the Ways and Means Committee to reduce benefits in the distant future by raising the age of eligibility to 68 by stages between 1990 and 2001. This proposal would have reduced the high projected costs of the future program; it would have imposed no disadvantage on anyone for a long time, and then only with full warning; and it was consistent with the spreading view that their continued work and productivity benefit the elderly as well as society. But this alternative attracted no Congressional support inside or outside the Republican party, one of whose senators, Bob Packwood of Oregon, was quick to brand it "hare-brained."

Though at first glance it might seem costless for today's politicians to enact distant reductions in benefits, the politics of social security does not work that way. Distant reductions in benefits fall on current taxpayers, that group whose acquiescence is most needed to sustain the current system. Irrationally, perhaps, but no less surely, distant reductions in benefits are also opposed by current beneficiaries, who feel threatened by them. Moreover, in the social security program all the usual political constraints against reductions in benefits are powerfully reinforced by the widespread perception that whatever benefits have been promised in law are benefits to which prospective recipients are entitled by right in return for work and tax payments—no matter how tenuous, remote, and indirect the relation between taxes paid and benefits promised may be. Benefit reductions, in short, are not a likely choice.

It seems increasingly likely that a shift to general revenues will eventually occur even though the present leaders of the revenue committees—Ullman in the House and Russell B. Long in the Senate—have been opposed to it, and even though Congress rejected that course in 1977. The issue of financing did not die then. Congress and its constituents are not content with what Congress did in 1977, and proposals to roll back social security taxes have begun to

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surface in the *Congressional Record,* as have proposals to finance some or all of the cost of Medicare and disability insurance with general revenues.

Shifting some portion of Medicare or disability costs to general revenues will both reduce the visibility of such costs and allow for expansion of the basic program of old-age insurance within the framework of payroll-tax financing. In particular, Congress is under pressure to improve benefits for married couples both of whom work, thus ending the comparative disadvantage of the working spouse, who today gets little or no additional social security benefit from work and taxpaying. Rectifying this situation would improve the program's equity but greatly increase its cost, for the only politically realistic assumption is that no one's absolute benefits would be reduced by the change.

Whatever is done is likely to be done after a hard debate, and hard debate, like hard votes, will be new. In the past, public argument has often been the victim of the program's easy politics, with the result that the financial deficit is not the only deficit in social security. There has also been a massive deficit in public understanding, and Congress today is contending with the effects of that deficit too.

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Pocketbook Politics

GARY R. ORREN

EDWARD Tufte's new book* suggests that American voters faithfully observe the Biblical injunction, "In the day of prosperity be joyful, and in the day of adversity consider." For Tufte's is a well-written, sensible, and timely case for the proposition that there exists a communion of politics and economics. "As goes economic performance," he says, "so goes the election"; and indeed, "as goes politics, so goes economic policy and performance."

That politics and economics are related is hardly an unusual notion. Nevertheless, Tufte's argument runs counter to some of his colleagues' recent speculations. Prior to 1976, more than a score of political scientists, including myself, used various data and methodologies to demonstrate that the American electorate had aligned itself along two different and competing dimensions of political conflict: a traditional partisan cleavage over New Deal-type economic issues, and a newer ideological cleavage that emerged from the issues of the 1960's. Some analysts argued that this development signaled a shift in the substantive agenda of national politics and that economic issues would be supplanted by divisive social issues. Today, the primacy of ideological social issues remains a prophecy unfulfilled, while Tufte's confident placement of economic issues at center stage in American politics is confirmed.

His treatment of political issues also differs from other analyses. For many years the portrait of voters and elections was unflattering. In some respects it challenged the very idea of democratic popular control: The public was accused of being unequipped to assess policy; government actions were said to exert little influence on voting behavior; and elections were thus seen as inscrutable guides to policy making. Tufte ascribes more rationality to government and the electorate than do many contemporary political scientists. The reason for this is that he looks at economic issues from a slightly different perspective.

There are really two different kinds of political issues and the prevailing view in political science often fails to recognize one of

* ***Political Control of the Economy*, by Edward R. Tufte. Princeton University Press. 168 pp. $10.00**

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them. Some political issues are "position" issues. They reveal where a citizen stands ideologically when confronted with a set of alternatives. "Valence" issues, on the other hand, do not reflect a "left" or "right" position, but involve identifying a party with some "value"—peace, corruption, or whatever—or an assessment of its performance in office. Which party, for instance, does the public see as the party of "prosperity," or which party do people think has done or is likely to do a better job handling unemployment? Sometimes a single issue can be expressed in either positional or valence terms—witness the Vietnam issue, on which many positional "hawks" and "doves," who disagreed on the position issue of whether the war should be continued, shared valence opinions about whether or not the war was a mistake.

Nowhere is this dual nature of public opinion more clearly illustrated than in the economic realm. We can discover the voters' *positions* on economic policy by asking whether they think it is more important to fight unemployment or inflation, or whether they would balance the budget or increase government spending. But the nonpositional, nonideological aspects of the economic issue—such as whether the voter is seriously concerned about inflation, which party he thinks is more likely to keep prices down, or his assessment of an administration's economic performance—are equally important.

Indeed, economics' greatest political potential is as a valence, not position, issue. Most voters do not care particularly whether health is restored to the economy through wage-price controls or budget balancing. But they do care that the problem be solved. During the 1976 campaign, Carter was criticized for not defining his economic program and for failing to take a clearer position than he did on the relative importance of inflation and unemployment. But voter surveys suggested that the public's view of the general state of the economy and Ford's handling of it were more important than these ideological questions. The central issue was Ford's record.

Unfortunately, whenever political scientists have discussed or surveyed the role of issues in elections, they have invariably emphasized position issues and ignored, trivialized, and denigrated valence issues. The media suffer from the same myopia. Overlooking the role of valence issues in a campaign, they complain about "issueless" elections, criticize campaign rhetoric as unsubstantive, unspecific, and backward-looking, and chide the candidates for not providing blueprints for the future.

But as V.O. Key once demonstrated, our political system allows for voter rationality despite the absence of clear-cut policy choices. The issues that work best in our system—and which therefore have dominated our electoral history—are not ideological choices that chart the future but performance issues that assess the past. To the voters, the most obvious issue is whether a party has done a good or bad job. These judgments are of course colored by long-term partisan attachments, but voter loyalty is not automatic. Parties thus create coalitions out of each other's mistakes. Favorable judgments result in massive shifts rewarding incumbents, and negative judg-

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ments in severe punishment. The electorate commands prospectively only through the officeholder's anticipation of future electoral verdicts.

TUFTE's conclusions about the role of economic issues fit comfortably within this theoretical framework. If we accept his interpretation, democratic "linkages" operate reasonably well in the economic sphere. Most voters cast their ballots according to their long-term partisan loyalties, but a critical number defect to the opposition if they make a negative appraisal of the incumbent administration's record on economic and other issues. Fearing possible electoral reprisal, government officials design economic policies they think will appeal to the electorate, and voters in turn reward or punish them in light of economic performance.

Tufte first explores the impact of politics on the economy, concluding that "economic life vibrates with the rhythms of politics." Those vibrations result because elections influence the timing of economic policy, producing an "electoral-economic cycle," and because political-party ideologies shape the content of economic policy and its outcomes. He finds signs of an electoral-economic cycle in most of the world's democracies. In the United States he sees a two-year cycle, in which the growth of real disposable income accelerates in election years and decelerates in non-election years, and a four-year cycle in which the unemployment rate reaches its minimum in the months immediately prior to an election and increases thereafter. Although this pattern did not hold during the Eisenhower years, Ike's belief that the public was most concerned with controlling inflation and the government deficit is further evidence, according to Tufte, of the influence of political priorities on economic policy.

In a long, impressive chapter Tufte describes the policy instruments that politicians use to fuel this electoral-economic cycle and documents the well-known seasonality of transfer payments. Increases in social security and veterans' benefits usually occur during election years, and typically peak in the month before election day, so that checks reach the voters just before the balloting. The increases in payroll taxes needed to pay for these biennial economic surges are usually deferred until after the election. The most glaring example of this electoral-economic cycle was Nixon's meticulous choreographing of a timely economic expansion just before the 1972 election.

Tufte makes a convincing case for the regularity of pre-election economic transfusions. But to me, the exceptions are as interesting as the general trend. Ideology is a powerful countervailing force. Eisenhower's personal beliefs and political perceptions precluded economic tinkering, even in the face of a deep pre-election economic slump in 1958. In 1976, Gerald Ford was unwilling to sacrifice his own conservative economic principles for political gains (partly because of Reagan's ideological challenge).

In addition to influencing the timing of economic policy, politics

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colors its content. Tufte shows that political ideology has shaped party platforms and Presidential policy reports, and that the priorities established there are mirrored in the opinions of party rank and file. But it is more crucial to his argument to prove that economic *outcomes* differ between the two parties, and here his evidence is incomplete and unconvincing. Tufte marshals evidence from several comparative studies showing that the ideological orientation of governing parties in about a dozen countries is consistently related to economic outcomes, yet his evidence for the difference between Democratic and Republican administrations in the United States is meager. His argument rests primarily on a graph of changes in inflation and unemployment rates in only eight Presidential election years (1948-1976). Changes in inflation and unemployment were consistent with the political ideology of the parties in five of those years. Tufte suggests a plausible explanation for two exceptions: Incumbents forego their initial partisan priorities when an economic problem reaches crisis level, a practice exemplified by Carter's current preoccupation with inflation. Nonetheless, armed only with the data presented in this book, I would be reluctant to challenge the notion that "there's not a dime's worth of difference" between the parties in the United States.

In any event, evidence of positional differences between the parties may be less crucial in electoral terms than some might believe. Voters are often more sensitive to the valence aspect of the economic issue—the actual condition of the economy and the performance of the incumbent administration—than to position issues. And most candidates surely prefer to campaign on valence issues. This leads us to the final piece in Tufte's causal puzzle: the effect of the economy on politics. He argues that elections—even mid-term Congressional ones in which the President's name is not on the ballot—are referenda on the performance of the President and his management of the economy. Tufte bases this argument on the results of a regression equation predicting the nationwide Congressional vote for the incumbent party from data on the President's popularity (as measured by the Gallup approval rating) and growth in real income. He concludes that a 10-percent rise in the President's popularity will yield a 1.3-percent gain in the midterm-Congressional vote for the President's party, and an annual change of 1 percent in real income will increase the incumbent party's vote by .6 percent. Tufte's model forecasted that Congressional Democrats would fare worse than they actually did in the 1978 elections last November, probably because it fails to take into account two powerful trends: the inertial effect of incumbency and the decline of party (the waning of both partisan loyalties and party organizations). Because of incumbent strength and party weakness, sitting Congressmen are now less tied to a President's popularity than they once were. Furthermore, Democratic Congressmen in 1978 avoided severe electoral retribution over soaring prices partly because the voters still consider the Democrats better able than the Republicans to dampen inflation or lessen unemployment, and a rapidly growing

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number doubt that either party is really capable of controlling the economy.

Though the pivotal "economic issue" in last November's election seemed to be cast in positional terms—a left/right debate over taxes and Federal spending—I have argued elsewhere that the apparent conservative shift is better understood in valence-issue terms. Unquestionably, the "tax revolt" includes economic conservatives who are philosophically opposed to government and favor private over public solutions. For most Americans, however, the new mood does not represent much change in liberal or conservative positions on the issues, but rather a deterioration in their overall confidence in government. It is less a turn to the right than a "turn-off" to government generally. After two decades of disillusion, scandal, and ineptitude, Americans are demanding the elimination of waste and inefficiency, a classic value shared by liberals and conservatives alike.

ONE might best describe *Political Control of the Economy* as a "quantitative essay." We are familiar with the prose essay form: an analytical and interpretive composition that is shorter, less systematic, and less thorough than a full study. Tufte's scholarly tastes run to numbers, graphs, and regression equations, and this little book is a delightful collection of appetizing and provocative quantitative evidence. As is true of its prose counterpart, however, the quantitative essay is in no sense comprehensive. Its findings are suggestive rather than conclusive.

In a prose essay, an author can sometimes camouflage imprecision with rhetoric and gloss over causal arguments; this format is poorly suited to a quantitative exercise. Most of the shortcomings in Tufte's numerical treatise derive from the fact that it is less cautious and more incomplete than it should be. I don't mean to suggest that one must say everything on a subject to say anything. But one must pay most careful attention to standards of evidence and proof to answer causal questions through quantitative data analysis.

Tufte's argument is undercut by too many exceptions and most of his statistics rest on a handful of cases. He examines eight Presidential elections, but this number falls to six when the Eisenhower years are excluded (since they do not fit the argument). This leaves only two Republican administrations, a problem further exacerbated by Tufte's concession that "the extremes of 1972 were special because Richard Nixon was special."

The chapter on the economic and political determinants of voting is written with a certitude inappropriate for data analysis (although this is not true of Tufte's previously published journal articles, from which this chapter is partially drawn). Alternative and competing explanations are not emphasized, nor is the reader warned of the many limitations and assumptions of Tufte's model. His methodology is very sensitive to seemingly minor modifications in factors, such as variable definition, years included, and model specification. Yet, aside from a footnote that refers readers to his previously pub-

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lished pieces, there is little hint of these potential difficulties and qualifications.

The clearest example of the incompatibility between important questions and shaky data analysis is in a chapter on elections and the international economy. Perhaps the most provocative and novel idea in the book is found in these six pages, in which Tufte attempts to explain why the ups-and-downs of the major capitalist economies have increasingly become synchronized in recent years. Because their economies accelerate in election years and decelerate thereafter, and since electoral calendars have increasingly coincided, part of the explanation for increasingly parallel economic cycles lies in the fact that countries are holding elections at the same time. What a marvelously parsimonious and tantalizing explanation! Unfortunately, Tufte pushes some very weak data awfully hard. The closer one looks at the data, the more problems one sees: They cover very few years, important anomalies are unexplained, and crucial parts of the argument are asserted rather than proved. In short, Tufte's conclusion must be considered an interesting hypothesis that requires further testing.

TUFTE concludes his book with a discussion of whether macroeconomic policy should be controlled by citizens and their political leaders, but we might ask whether economic policy *can* be controlled politically any longer. Is the book's title applicable to the present and future? Tufte argues that from 1946 to 1976 political control was more impressive in the economic-policy area than in any other. It is ironic, then, that this is the area in which the Carter administration has seemed least in control and most impotent. While the public cheers Carter for his foreign-policy triumphs (especially in the Middle East), they assail his failure to rescue the sinking economy. There have always been limits to the political control of the economy, and Tufte identifies some of them: the exclusion of much economic activity from public control or review, the divided interests of the legislature and the bureaucracy, and the competition between the prescriptions of economic theory and political considerations. But has something happened over the last decade to make governing the economy even more difficult than before? Are we experiencing a departure from the historical pattern which Tufte describes?

Scholars and politicians have called attention to recent structural changes that have seriously impaired governmental authority, especially Presidential power. Among them are a shift in the balance of power from "the imperial Presidency" to a more independent-minded Congress; public and Congressional mistrust of the executive branch; the weakened influence of committee chairmen and the diffusion of authority in Congress; the declining salience of party in elections and of party discipline in the legislature; the growing importance of incumbency in House elections; the welling strength of the media as a center of opposition to the government; heightened interest-group activity; and, the proliferation of zealous new

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lobbying organizations. Acknowledging these institutional changes, Carter's former special inflation advisor, Robert Strauss, recently complained that "even FDR and LBJ would have had a hard time getting anything done around here [Washington] today."

Of course, some of Carter's economic problems are self-inflicted. The two-pronged strategy that served him so effectively in the 1976 campaign and especially in the primaries—a nonideological, coalitional appeal and an antipartisan "outsider" posture—has often proven ill-suited to the task of governing. His steadfast avoidance of ideological categorization and quest for a universal coalition have made his policy efforts seem "fuzzy" and provoked attack from both the left and the right. His reluctance to discard the outsider image has undermined the strong partisan loyalty and special-interest support so vital to the success of Presidential economic initiative.

The nature of our current economic malaise may also account for government ineffectiveness. Stagflation may be a rare and particularly resistant strain of economic virus not cured by familiar economic remedies. We certainly cannot sort out here how much of the governability problem is due to Carter's own shortcomings and how much is due to factors beyond his control. But it is safe to say that recent events have raised doubts about *any* administration's ability to control the economy by translating its priorities into practice.

Who, then, should read Tufte's book? In his closing paragraph the author recommends it to the public as an aid to better evaluation of economic policy. I suspect, however, that citizens understand their own economic self-interest fairly well, often painfully well. The book might better be read by officeholders and would-be candidates. V.O. Key once noted the importance of politicians' understanding properly the meaning of electoral decision:

> Theories of how voters behave acquire importance not because of their effects on voters, who may proceed blithely unaware of them. They gain significance because of their effects, potentially and in reality, on candidates and political leaders . . . Perceptions of the behavior of the electorate held by political leaders . . . condition, if they do not fix, the types of appeals politicians employ as they seek popular support. . . . They may govern, too, the kinds of actions that governments take as they look forward to the next election.

If Tufte's confirmation of the conventional wisdom that economics influences votes enhances our politicians' senses of democratic accountability, it will have truly served the public good.

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A Response to "Censorship for the Common Good"

WILLIAM J. BENNETT'S article, "Censorship for the Common Good," in the Summer issue of *The Public Interest* takes issue with a recent report of the United States Commission on Civil Rights, *Window Dressing on the Set: Women and Minorities in Television.* I would like to clarify the position of the Commission in light of a number of the author's apparent misconceptions regarding both the findings and recommendations of the report.

The article draws mainly on material in Chapter 1 of a seven-chapter report. While Bennett notes that he is restricting himself "to a small but representative sample of the 'data' and the 'evidence' presented," he does not make clear that the material he is using is *not* the data on which the report's findings are based. Chapter 1 is an introductory chapter that provides background for the study the Commission conducted. It is designed, in part, to review some of the major ways minorities and women had been portrayed during television's first 25 years as a mass medium. The chapter also explores some of the reasons for the initial absence of minorities from television and for some of the stereotyped ways in which they were subsequently portrayed.

The evidence on which the findings regarding the portrayal of minorities and women in television drama are based appears in Chapter 2. Utilizing a content analysis of prime-time television drama for the years 1969 to 1974 (under contract with the Annenberg School of Communications of the University of Pennsylvania), the report documents underrepresentation of women and minorities in television drama (when compared to U.S. Census population data) and stereotyping, particularly in the occupations in which they are portrayed. Unfortunately, Bennett's article contains no reference to this material.

One of the functions of Chapter 1 was to report a variety of views regarding the ways women and minorities had been portrayed in television drama over the years. The article suggests this with its references to the Association of American Indian Affairs and the National Black Feminist Organization. The chapter frequently counterbalances one opinion with another, but the article's author concludes that the Commission "endorses" them all and "wants it [television portrayals] both ways."

The report's presentation of a variety of opinions continues in a section discussing Norman Lear's situation comedies. The Commis-

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sion notes that *All in the Family* had been "a pioneer in using the situation comedy as a format for the exploration of controversial issues," such as bigotry, but the Commission also observes that this undertaking had not gone without criticism. Laura Hobson's conviction that bigotry is neither lovable nor funny is presented; so is Norman Lear's defense that he uses bigotry in a humorous way as a technique for exposing prejudice. The fact that Norman Lear's production company meets with members of public-interest groups regarding program themes is reported, as is the dissatisfaction of one group over the apparent fruitlessness of these meetings. It does not appear to follow, therefore, for Bennett to conclude that "[i]n the view of USCCR, the only unqualifiedly good force for the portrayal of ethnics on television is Norman Lear, the creator of *All in the Family*."

Of major concern to this Commission is the potential impact on viewers of stereotypic portrayals of minorities and women. When a particular group—American Indians, for example—is seen repeatedly as the "bad guy"—"attacking wagon trains," "holding white girls captive," and any number of other hostile activities directed toward whites—and is rarely, if ever, portrayed as the "good guy," it is quite probable that negative attitudes are developed and reinforced not only among the majority viewers but among the particular minority as well. Whites are seen in a wide variety of portrayals; American Indians and other minorities should be portrayed in a similarly diversified manner.

Finally, the article concludes that the U.S. Commission on Civil Rights is "pressing for government censorship of television programing in the United States." When this Commission recommended that the Federal Communications Commission conduct an inquiry and a proposed-rule-making proceeding concerning the portrayal of minorities and women in television drama, it was *not* advocating government censorship. Government censorship is not only repugnant to Americans, it is clearly illegal.

Chapter 4 of the report describes the FCC's role in developing policies and rules with respect to programing. Among the FCC actions reported on in that chapter is its first inquiry and proposed-rule-making proceeding on programing and advertising directed toward children. Although the FCC elected not to adopt rules at the end of its first inquiry—preferring to monitor industry attempts to regulate itself—it nevertheless set forth a series of expectations it had regarding the quantity and type of programing offered for children and the nature and amount of advertising that accompanies them. The FCC began its second inquiry in August 1978, seeking a variety of data about programing and advertising practices. In the end, the FCC may elect to formulate rules. To do so is within its authority if the proposed rules are supported by a properly prepared administrative record and if ample time for public comment is made available.

A major portion of *Window Dressing on the Set* reported on the

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employment status of minorities and women in television. While improvements in their status have occurred since the adoption of the FCC equal-employment-opportunity rule, this Commission found that minorities and women are underrepresented in positions with decision-making authority. The report recommended that the FCC increase its efforts to enforce its rule and—to encourage greater diversity in the portrayal of minorities and women in network programs—to seek authority from Congress to extend its rule to cover employment at the networks.

I am pleased to have the opportunity to clarify any misunderstandings regarding this Commission's position with respect to the status of women and minorities in television, and to provide a somewhat fuller picture of the information contained in the Commission's report. —*Arthur S. Flemming*

William J. Bennett replies:

Arthur Flemming argues that my criticism of the USCCR's report on television relies too heavily on Chapter 1 of the report and that it should not because Chapter 1 is only an "introductory" chapter and does not present data or evidence, but only "background." But the fact is that Chapter 1 invokes study after study of "stereotypes" in television, speaks of their "findings" in approving language, and that these studies and judgments are carried forward to the report's conclusions. For their arguments, the commissioners do not rely simply on the graphs and statistics (most of which, by themselves, are irrelevant) that are found in other chapters. Rather, the commissioners consistently use the comments of various ideologically predisposed groups to support their own, not coincidentally identical, conclusions. In this way, as any reader can tell, the conclusions of the "studies" of these groups certainly are part of the data presented. And one might ask, if Chapter 1 with its citations and quotes is not intended to be taken seriously by the reader, then why is it Chapter 1?

For the most part, the "data" reported in other chapters, such as the one entitled (typically), "Proportion of Major Characters in Serious vs. Comic Roles by Race and Sex," have meaning only to those who hold a mistaken theory that television is a form of government, or at least a particular kind of commonwealth, and one that must be governed by a slavishly statistical principle of representation. The point is, of course, that such "data" constitute an argument only for those already committed to the conceptual, ideological framework supplied in Chapter 1.

Mr. Flemming argues that the report offers the "presentation of a variety of opinions," and that my conclusion that the report is biased is unfair. For his example he challenges my contention that the report finds Norman Lear to be an unqualifiedly good force in television programing. The reader can judge for himself whether or not the authors have a balanced view, or are partial to Lear. I quote from Chapter 1 four passages about Norman Lear:

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1. The report identifies Mr. Lear, and his importance to discussions of television comedy:

> Norman Lear . . . has also been instrumental in establishing a trend of realism in situation comedy. His technique has been to treat realistically and humorously controversial issues and contemporary social and personal problems.

2. Following the presentation of Laura Hobson's argument about the bigotry of *All in the Family* the commissioners cite Lear's retort to Hobson:

> . . . portraying Archie (Bunker) as a lovable bigot allows viewers to see the prejudice that lurks within us all.

3. A few pages later, the commissioners speak of shows like *Barney Miller* and *Welcome Back Kotter*:

> . . . instead of realistically exploring issues related to characters' ethnic backgrounds as Norman Lear attempts to do [these comedies do] not deal with controversial issues.

4. In a section entitled, "Public Interest Groups in the Production Companies," the authors write in an approving tone:

> . . . the efforts of Norman Lear, MTM Productions, and other producers of situation comedies to deal realistically with complex issues have been aided by representatives of various public-interest groups who seek accurate treatment of issues which concern them and the people whom they represent.

This "balanced view" of Norman Lear's role is reminiscent of the jurist who caustically spoke of a lawyer's brief as "balanced," saying that it leaned neither toward partiality on the one hand nor to impartiality on the other.

Perhaps the most generous conclusion to be drawn from the report is simply that the commissioners have not been watching television lately. If they turn on the tube they will see a variety of faces, colors, and sexes in a variety of roles, and most of the time, to take the most controversial example, they will see blacks portrayed as decent, wholesome, and law-abiding—that is to say, as "good guys."

As to whether the USCCR is pressing for government censorship, Mr. Flemming says that the Commission only recommended that the FCC "conduct an inquiry and proposed-rule-making proceeding," but by this, he says the Commission was not advocating government censorship. Well, what then was it advocating? What kind of rule-making did it have in mind? Did it intend to recommend rules that would have no effect? The USCCR in its recommendations to the FCC did not press for censorship of *particular* shows, but for "proposed-rule making" of a general nature. I persist in my belief that such "proposed-rule making" amounts to censorship; to refine the distinction, perhaps the censorship is not retail, but "only" whole-

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sale. Now following this disavowal, Mr. Flemming goes on to talk about the FCC's role in developing policies and rules with respect to programing and the portrayal of minorities and women. Thus, in one paragraph he tells us that the USCCR does not wish to censor programing, and in the next paragraph he tells us about plans to establish rules for the portrayal of minorities and women. What gives?

Mr. Flemming and his colleagues believe that unless there is a given percentage of blacks, other minorities, and women in programing, television is not doing its job. Apart from the insult to such people this position entails (by treating individuals as categories where membership in a particular group means the presence of a particular "mind-set"), it is simply inappropriate. Thinking in numbers and thinking in race have become fashionable in recent years. As do others, Mr. Flemming and his colleagues invite us to revert to tribalism as the proper theory of democracy *and* the proper practice of television. This invitation ought to be rejected.

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CURRENT READING

It's the Same the World Over

Yugoslavia is experiencing some problems familiar to Western democracies, according to *The Economist* (October 28, 1978). In one instance, the government is threatening to reduce drastically the wages of a large number of workers:

> The government's case is that Yugoslavia's self-managing enterprises have been paying themselves wages they have not earned. In the first seven months of this year, according to the federal prime minister, Mr. Veselin Djuranovic, personal incomes rose by 6 percent while productivity improved by only just over 3 percent, a trend which had begun last year. President Tito has been telling workers up and down the country that higher wages have to be earned, and that enterprises awarding themselves high wages and then hoping to be rescued by society from the fruits of their folly were lacking in socialist solidarity. President Tito also fulminated against the tendency toward "excessive egalitarianism" which, he said, was encouraging skilled workers and engineers to emigrate.
>
> Behind these statements lies the Yugoslav leaders' realization that their incomes policy, embodied in a series of so-called "social agreements" signed by the enterprises, the unions, and the government back in 1976, has broken down. The dam held for a while; then, earlier this year, it became clear that it would not hold any longer. . . .
>
> To hold wage increases down, the government in July also introduced a drastic credit squeeze. In the first six months of this year, it pointed out, the money supply had risen by 28 percent instead of the planned maximum of 19 percent. The governor of the central bank said the main reason was too much liquidity in the banks. But why do enterprises have to borrow so heavily, asked the Belgrade weekly *Nin* last week in an angry and quite unprecedented open letter addressed to the Federal government? Its answer was that the government was taking away from enterprises so much in taxes and other imposts that they had little or nothing left over for their investments. . . . The rise in the money supply has had predictable effects. Inflation has been rising ominously into double figures again and is now running at a 15 percent [annual] level.

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The End of the "Hawthorne Effect"?

Students undergoing initiation into contemporary social science usually find themselves introduced rather quickly to a phenomenon known as the "Hawthorne effect"—the tendency of people to alter their behavior when they are under study by social scientists, thus jeopardizing the accuracy of the study. This is the sole cautionary note many students will hear. The Hawthorne effect was identified in the course of the huge Hawthorne study of workers' efficiency conducted 50 years ago, in which it was concluded that efficiency is mostly determined by the quality of relations among workers and between workers and management, and affected only slightly by material incentives and conditions in workplaces.

The Hawthorne researchers set out in 1928 to identify physical and material factors that influenced the quantity and quality of workers' output at Western Electric's Hawthorne plant in Chicago. They first tried manipulating lighting levels and were surprised to find a positive change in output whether they increased or decreased lighting. This prompted them to expand the study, which ultimately spanned eight years and included six experiments. In the second experiment they tested for the effects of "work environment, physical requirements, management, and social relations." In subsequent experiments they tested in various ways for the effects of group-incentive payments, social relations, and worker regulation of the pace of work. Using the statistical methods available to them at the time, they found only a small relationship between the physical and material factors and output. This led them to conclude that unquantifiable "human relations" accounted for changes in output.

This was a truly revolutionary conclusion for it had long been assumed that workers were primarily motivated by physical and material factors. With "human relations" shown to govern efficiency, a whole new area of exploration was opened up to social scientists. And indeed the study had an immediate and lasting effect on the whole of applied social science, and particularly on the management and personnel fields, where it spawned entire mini-disciplines. Today, the conclusions of the Hawthorne study provide the basic assumptions for most of the work done in these fields.

Recently, however, a new analysis of the original data, published in *American Sociological Review* (October 1978) by Richard Herberte Franke and James D. Kaul, has apparently invalidated the entire Hawthorne study. In fact, it reverses the original findings: "Human relations" appear to have little effect upon efficiency, and the two factors at first discounted are said to have an overwhelming effect. Franke and Kaul conclude that "most of the variance in production rates . . . could be explained by measured variables. To assume that output changes resulted from unmeasured changes in human relations seems injudicious, even though it was the assumption of the Hawthorne researchers and has been accepted and built upon by many social scientists over the past several decades."

Franke and Kaul reanalyzed the raw data using forms of multiple-

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regression analysis, a technique that has become a standard social-science tool since the spread of computers. They found "significant" correlations between output and the tested variables, where the original researchers had found only small relationships. "Managerial discipline"—two workers were fired in the course of the experiments—was found by Franke and Kaul to explain most of the change in output. Thus "human relations" do partially govern output, but it is simple discipline and not "humane treatment" that informs the term. The first Hawthorne researchers also wondered whether the onset of the Depression during the course of the experiments, "might have been a disturbing factor," as Franke and Kaul put it. "Yet they did not appear to suspect its positive influence on production. The increased importance of jobs and the real danger of losing them . . . may explain its positive contribution to output quantity . . ." Neither did the original researchers see the reduction of fatigue through rest periods as very important. Franke and Kaul again contradict them. Finally, the group pay incentive discounted in the original study was found in the reanalysis to be of some value. Having thus explained statistically most of the variations in production the original researchers could not, Franke and Kaul conclude that "the unmeasured supervisory and social-interaction variables were not very important economically."

Because of the limitations of the statistical methods available to them, the original researchers could not show that these statistical relationships were indeed significant. Yet one must ask how a study whose conclusions lacked any basis in quantitative evidence—and were actually based on the *absence* of such evidence—could have had such a tremendous and lasting effect upon social science? For one thing, the original data were not readily accessible to researchers, thus discouraging reanalysis. And because of the expense involved it is difficult to verify "longitudinal" studies by repeating them. Franke and Kaul recognize these explanations and further suggest that the predilections of social scientists may help explain the study's easy acceptance:

> One explanation for this enthusiastic embrace of something scientifically unproved may lie in the particular emphasis of the Hawthorne conclusions, another in the nonsubstantive nature of most criticism of them. Conclusions of the Hawthorne studies seem to have been congenial to persons who were in agreement with the prevailing economic system, but were prepared to proceed from simple materialistic notions about work motivation on to more complex social theories, which could be seen as more useful, humane, and democratic.

Finally, Franke and Kaul remark that the famed Hawthorne effect—the notion that people alter their behavior when under study—now seems unfounded. Perhaps it will be replaced in the social-science curriculum by a cautionary note drawn from the history of the Hawthorne study's acceptance.

—Steven D. Lagerfeld

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What's Sauce for the Goose . . .

A magazine called *The Grantsmanship Center News* (May-August 1978) reported that a proposed piece of legislation was arousing opposition in some unexpected quarters:

> Congress may soon pass new lobbying-disclosure legislation to replace the 30-year-old law that currently governs such activity. And, predictably, many people are upset. Surprisingly, however, those who are most vocal in their opposition are not the large corporations famous for their lobbying, but rather church and environmental organizations and the American Civil Liberties Union. . . .
>
> Under the terms of the House bill, an organization would be required to register with the Comptroller General and file quarterly reports on its lobbying activities if, in the course of a quarter, it: 1) employs one individual who lobbies 13 days, or 2) employs two people lobbying seven days each, or 3) spends $2,500 or more on lobbying activities. The Senate bill sets an even lower threshold, requiring organizations to register and report if, in the course of a quarter, its representatives have 15 or more "oral communications" with Congresspersons or their aides. Organizations lobbying at these levels would be required to report who does the lobbying, how much they are paid, and the total cost of all their lobbying-related activities.
>
> Violations, to be enforced by the Justice Department, would be punished both by civil fines and by criminal fines (or jail terms).
>
> One of the reasons this legislation angers many public-interest organizations is the bookkeeping they claim would be necessary to record lobbying expenses. These organizations point out that their activities involve more than lobbying, so in order to determine their total lobbying expenditures they would have to figure out what percentage of each individual salary and organizational expense went to lobbying. Rev. Barry W. Lynn, policy advocate of the Washington office of the United Church of Christ, feels that the proposed record-keeping requirements would be so burdensome that many smaller organizations would have to drop out of lobbying. Rhea Cohen of the Sierra Club's Washington office told *The Wall Street Journal* that the reporting requirements of the Senate bill would cost her organization $340,000 a year, a figure it "can't live with."

The Decline of the Railroads

In an article for *Policy Analysis* (Summer 1978), Charles A. Lave provided a brief history of government regulation of the freight industry, and the railroads in particular:

> The first thing to notice here is that the decline of the railroad freight business began long before there was any significant Federal highway program, and we need look no farther than the method of pricing freight to see why this happened. In the early years of railroading, freight tariffs were set on the value-of-service principle: Shippers of expensive manufactured goods could afford to pay high tariffs, so the

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railroads charged them high tariffs; shippers of inexpensive bulk goods could afford only low tariffs, so their fees were set low. In essence the railroads based their rates on the value of the service to the shipper —i.e., the shipper's ability to pay—rather than on the cost of moving the goods. So a manufacturer paid much more for a ton-mile of service than a farmer and provided a greater share of the railroad's profits. When the U.S. Interstate Commerce Commission (ICC) was created, it institutionalized this value-of-service concept. During the years when railroads were the only source of transportation, the relative exploitation of manufacturers worked to the advantage of the railroads. But this gap between the cost of providing freight service and its sale price was also a tempting opportunity waiting to be exploited by some new form of shipping—which the trucking industry was the first to realize.

Even though it cost trucks more than it cost railroads to move a ton-mile of freight, the trucks' costs were still lower than the artificially high prices charged manufacturers by the railroads. Trucks could provide better service—faster delivery with greater flexibility—at the same price as the railroads. Thus, to compensate for the relative difference in the quality of services, the ICC regulations that had once worked to the advantage of the railroads now prevented them from lowering their tariffs in order to charge lower rates than trucks. Naturally the trucking industry prospered and grew, and as a "reward" for its dynamic economic behavior it was eventually placed under the control of the ICC.

Once the trucking industry was under ICC regulation it, in turn, became vulnerable to simple competition. Ironically, the same ICC regulation that previously had helped the trucking industry then provided the profit opportunity encouraging private, nonregulated trucks. Under the ICC regulation, the common-carrier trucks had the same value-of-service pricing as the railroads; thus they also were overcharging high-value goods. It was not long before some manufacturers made the simple calculations to discover that they could operate their own trucking fleets for less money than the artificially high tariffs they were paying the common-carrier trucks—even though their private trucks generally had to return home empty. So private trucking prospered and now accounts for 56 percent of the intercity truck freight.

Unfortunately the ICC was not content to limit its interference to tariff schedules, but also began making direct allocations of freight runs. Thus, for example, it licensed a particular common-carrier to haul one commodity, frozen hush puppies, between a few specific cities: no other commodity, no other cities. A truck could not pick up additional cargo as it dropped off part-loads on its outbound trip, and on the way back it returned empty. Obviously such practices were inefficient and cost the freight companies money, but the ICC was not bothered by inefficiency (only by competition, apparently). The ICC simply allowed the freight companies to raise prices so that they could survive despite their inefficient use of resources. Thus everyone pays higher freight prices to satisfy the ICC's goal that these empty trucks be kept profitable. A number of economists have estimated that the net effect of ICC regulation is an enormous underutilization of capac-

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ity: Only about half of the total capacity of all railroads, common-carrier trucks, and private trucks is being utilized.

What the Economists Are Up To

As every social scientist knows, suggest any topic and a competent economist will be able to apply the tools of his trade—utility-preference schedules, indifference curves, opportunity costs—to an analysis of the phenomena. The *Journal of Economic Literature*, published quarterly by the American Economics Association, provides a valuable service, not only by reviewing all the major new books in economics and annotating literally hundreds of other books, but also by abstracting the most important articles in the world's major economic journals.

One of the major social problems in the U.S. today is, of course, the rising incidence of divorce. How can marital instability be explained? Here is one answer:

Becker, G. S., Landes, E. M., and Michael, R. T.—An Economic Analysis of Marital Instability

This paper focuses on the causes of marital instability. Section I develops a theoretical analysis of marital dissolution, incorporating uncertainty about outcomes of marital decisions into a framework of utility maximization and the marriage market. Section II explores implications of the theoretical analysis with cross-sectional data, primarily the 1967 Survey of Economic Opportunity and the Terman sample. The relevance of both the theoretical and empirical analyses in explaining the recent acceleration in divorce rates is also discussed. *J. Polit. Econ.*, December 1977, *85*(6), pp. 1141-87. National Bureau of Economic Research, Stanford, California.

Of course, where there is marital instability, there are extramarital affairs. How can one explain the division of time spent between wife and mistress? *Regardez:*

Fair, R. C.—A Theory of Extramarital Affairs

In this paper a model is developed that explains the allocation of an individual's time among work and two types of leisure activities: time spent with spouse and time spent with paramour. Data from two recent magazine surveys are available that can be used to test the predictions of the model regarding the determinants of time spent with paramour. The results of estimating the equation explaining time spent with paramour, by the Tobit estimator, are generally supportive of the model, although more evidence is needed before any definitive conclusions can be drawn. The model can also be applied to the allocation of time among other types of leisure activities. *J. Polit. Econ.*, February 1978, *86*(1), pp. 45-61. Yale University.

Food in America

Malnutrition, a serious problem in the United States 10 years ago, has been greatly reduced in recent years, according to Dr. Jean Mayer. "This has been achieved quietly, by completely bipartisan

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action," he said in his J. Seward Johnson Lecture at the Woods Hole Oceanographic Institution, *The World Food Situation: 1978* (April 4, 1978):

> In 1969 we had a very serious situation in this country from the point of view of nutrition. The best estimate we had was that 20 million Americans had incomes which were so low that there was no way in which they could get a diet which would even approximate those minimum standards of nutrition compatible with sound growth and health. The food programs that existed at that time were very limited. Over 600 of the approximately 1,100 counties in the United States had no food programs whatsoever for the poor. The free school-lunch program only covered about three million children. The food-stamp program reached about one-half million people, and it was an extraordinarily poor program. It cost $40.00 to get $60.00-$80.00 worth of food stamps. If one did not have the $40.00 every month, one was dropped from the program. There was a commodity program, which reached a few more people. It was an extraordinarily inconvenient program. It gave in practice no more than six commodities, many of them unfamiliar to most of the population of the United States. . . .
>
> The number of recipients of food stamps went from less than one-half million to 19 million in 1975 at the height of the recession. It is now about 17.5 million. Every county in the United States now has food programs. The number of school children receiving free school lunches has gone from 3 million to 11 million. We have developed summer food programs which reach between 2 and 3 million children. There is now a series of programs called the WIC programs which are still expanding and are programs specifically designed for pregnant women, infants, and young children. The various communities in the country, subsidized by the Federal government and state governments, have developed two types of programs for the elderly—the community programs which make use, usually, of high-school cafeterias, churches, and other public buildings, and the Meals on Wheels for the elderly and for shut-ins.
>
> This is not to say that there are no individuals who are hungry in America now. But this is to say that as a social problem, it has drastically changed in terms of order of magnitude and in terms of the nature of the problems. It has basically become a problem of local outreach rather than of Federal action. The appropriations which support those programs are almost all open-ended, which means that if the individuals can be identified, the money exists to feed them. The problem is that local agencies often do not have the outreach they ought to have and some of the recipients are difficult to identify. When you look at the problem of hunger in America, it really is not the same country it was 10 years ago.

The Backgrounds of the Poor and the Unemployed

Two Massachusetts Department of Manpower Development researchers, Maureen McLaughlin and Andrew Sum, have reported

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their conclusion that, based on an application of 1975 background data to people out of work in 1976, the state's unemployed "are generally *not* members of either poverty or near-poor families, but rather tend to be members of families with relatively high incomes." The poor, they say in *Interrelationships Between Unemployment and Poverty in Massachusetts: Implications for State Employment and Training Policy* (August 1978), are largely out of the labor market altogether:

> The average (mean) 1975 family-income level of the unemployed [$16,038] was slightly below the 1975 mean family income for all families in Massachusetts ($17,288), but slightly above the median, $15,864. . . . Only 19,318 or 6.8 percent of the unemployed [in 1976] were members of families whose 1975 incomes were below the OMB poverty line while an additional 13,650 persons or 4.8 percent were members of families with incomes between the OMB poverty line and 25 percent above it, i.e., the near poor. . . .
>
> The number of long-term unemployed persons at the time of the Survey of Income and Education was 123,906, and they constituted 43.3 percent of all unemployed persons. The average 1975 family income of this group was $15,311, a level only 7.3 percent below the average family income for all unemployed . . . The long-term unemployed were somewhat more concentrated in poverty families and less concentrated in near-poor families than the total unemployed. The proportion of long-term unemployed persons living in poverty families was 8.0 percent versus 6.8 percent for all unemployed. The proportion of the long-term unemployed living in near-poor families was 3.5 percent versus 4.8 percent for all unemployed.

What Works in Education?

Citing their study of 22 elementary schools with disadvantaged students, Jean Wellisch, Anne MacQueen, Ronald Carriere, and Gary Duck conclude in "School Management and Organization in Successful Schools," in *Sociology of Education* (July 1978), that students are positively affected by more demanding academic policies, and by administrators who put greater stress on achievement:

> In successful schools, that is, in schools which succeeded in raising student achievement, the administrators were more concerned with instruction; communicated their views about instruction; took responsibility for decisions relating to instruction; coordinated instructional programs; and emphasized academic standards.
>
> Successful . . . schools were characterized by administrators who felt strongly about instruction and assumed relatively more responsibility for instruction-related tasks such as selecting basic instructional materials and planning and evaluating programs for the entire school. These leadership qualities were recognized and reported by teachers, which no doubt reflects the fact that effective administra-

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tors also communicated their views concerning instruction to teachers. One means of communication, especially prevalent in successful schools, was a regular review and discussion with teachers about their classroom performance. Extensively coordinated programs also distinguished successful schools from nonsuccessful ones. Finally, it was found that administrators in successful schools emphasized academic standards by reviewing teaching performance, by opposing the postponement of basic-skills instruction, and by requiring students to repeat grades when standards for achievement were not met.

ZIP Codes Galore

A letter to the editor of *The New York Times* (November 7, 1978) from Mr. Peirce Wood described the likely effects of an innovation being considered by the Postal Service:

> The Postal Service proposes to add four digits to our present five-digit ZIP code system—a total of nine digits. This will give us one billion ZIP zones. 000,000,000 to 999,999,999 equals one billion combinations of digits.
>
> Is not the Postal Service being overgenerous? Using the 1970 census showing a national population of just over 200 million, one billion ZIP zones would enable every man, woman, and child in our country to be the proud sole owner of five ZIP zones.
>
> Even were the Postmaster General in his infinite wisdom to reduce the proposed new system to eight digits, that still provides one hundred million ZIP zones, (00,000,000 to 99,999,999 equals 100,000,000 combinations of digits). That would mean that a childless couple would be required to share a ZIP zone—pity!
>
> I ask you to try to comprehend the man-hours involved in subdividing the country into one billion ZIP zones. Savor the picture of a little Postal Service gnome puzzling over the subdivision of the Empire State Building into several thousand ZIP zones. Envisage the Postal Service Manual listing one billion ZIP zones. It would list each man, woman, and child in the 50 states followed by an address and the two ZIP numbers assigned to each. (One for front-door delivery and the other for back-door delivery?) Using the number of listings per page in a telephone directory as a standard, we find that the manual would be a row of volumes 287 feet long—almost the length of a football field.

A Bad Guess on Coal

The current enthusiasm for coal rests on a set of optimistic assumptions about the nature of the pollution caused by coal combustion and our ability to control it. But according to a recent article by Tom Alexander in *Fortune* (November 20, 1978), these assumptions have proved wrong. It turns out that the problem of pollution from coal combustion is more intractable than was thought, and that the government-mandated measures intended to combat

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it are actually aggravating both the pollution problem and the energy situation in general:

> For society at large, coal's most noxious and obnoxious drawback has always been its smoke. Of all the fuels that man employs, coal produces the most copious and complex array of emissions thought to be damaging to health. But how these emissions actually do their damage has long been a matter of guesswork. It now appears that our control policies were based on the wrong guess.
>
> For hundreds of years, most of the blame for the noxiousness of coal combustion has focused on the sulfur that is present in all coal in varying amounts and that combines with oxygen during combustion to form sulfur dioxide (SO_2).... Still, scientists have found puzzling anomalies in the evidence against sulfur dioxide. For example, laboratory workers who induced animals or human subjects to breathe SO_2 at concentrations even higher than those in polluted cities often found that the subjects didn't seem particularly distressed....
>
> Therefore, the control strategy that cities, states, and eventually the Federal government employed was to set hypothetical thresholds, or "no effects" levels, below which the pollutants might be regarded as harmless. With science largely mute as to what such thresholds might be, the permissible levels were determined by the political process.
>
> A variety of tactics were adopted to meet those levels. They included stiff emission controls on automobiles, which are abundant producers of NOX, hydrocarbons, and carbon monoxide. Factories and power plants were required to switch to low-sulfur fuels—oil, gas, or special coals—particularly during unfavorable weather conditions. Coal boilers were equipped with electrostatic precipitators that could remove more than 90 percent of the soot and fly ash, and pollution-emitting new plants were situated far from cities and fitted with tall smokestacks so that the pollutants could be diluted before they reached the ground....
>
> Yet some scientists continued to puzzle over contradictory evidence about SO_2, evidence that raised doubts about whether a threshold level could actually be said to exist and even whether the SO_2/particulate complex was especially harmful. The evidence included findings from some long and painstaking experiments at the Harvard School of Public Health by toxicologist Mary O. Amdur, who is now at MIT. Since 1949, Amdur had been exposing laboratory animals not only to SO_2 itself but also to a variety of sulfate compounds that are slowly formed as SO_2 mixes with oxygen and trace substances commonly found in polluted atmospheres. One of these sulfates, for instance, is ordinary sulfuric acid. Sulfates usually emerge in the form of ultrafine droplets or infinitesimal solid particles that tend to remain suspended in the atmosphere. Amdur found that several sulfates—principally sulfuric acid, but also sulfates of zinc and iron—were many times more irritating to the respiratory tracts of guinea pigs than oxides of nitrogen, hydrocarbons, and SO_2 plus particles. From the work of Amdur and others, most experts have concluded that most of the damage in urban air pollution comes from sulfates.

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Obviously, the evidence about sulfates does not alter the practical necessity to control the SO_2 precursor. But it has powerful implications for what the control tactics should be. It means, for instance, that sulfur pollution is *not* a local problem, as was long assumed. Rather, since the minute sulfate particles can be carried by winds for thousands of miles, they are long-range agents that affect dispersed populations. As Harvard's Richard Wilson points out, the tall-stack/electrostatic-precipitator remedies may well have the effect of *worsening* the hazard: When SO_2 is emitted close to the ground, it tends to adhere to leaves and other surfaces. The tall stacks provide the time for the SO_2 to convert to sulfates, which can be carried far and wide by winds. And while the 98-percent removal rate of modern electrostatic precipitators sounds impressive, the particles that actually get removed are precisely the large ones that human nasal and bronchial mechanisms would normally filter out anyway. The tiny particles that escape are the ones that can be carried down into the lungs. In any case, the precipitators can do nothing about the ultrafine, ultradamaging sulfate particles that are formed after the SO_2 leaves the stack.

All this helped to explain a puzzle that pollution monitors were already pondering: While SO_2 levels had been diminishing within the cities, the sulfate levels had often been *increasing*, not only in cities in the eastern U.S. but in the countryside as well. The prevailing winds in the U.S. flow from west to east, so the Northeastern states tend to be on the receiving end of sulfates produced elsewhere.

Gauging the effects of these pollutants on human health is notoriously difficult. . . . The most ambitious attempt to do this has been a decade-long statistical analysis by economists Lester Lave of Carnegie-Mellon University and Eugene Seskin of Resources for the Future. . . . A recent summary of their work is the book *Air Pollution and Human Health*, a dense but resounding indictment of sulfates and suspended particulates. The authors predict that reducing nationwide emissions of sulfates and particulates by 50 percent would lower the nation's mortality rate by 4.7 percent: in other words, save nearly 90,000 lives a year. The authors find no evidence that any threshold exists; sulfates are presumably dangerous to susceptible people at almost any level.

Most controversial of all in a society that is spending even more to control emissions from autos than emissions from industry, the analysis of Lave and Seskin seems to exonerate auto pollutants. They claim to be able to predict the mortality rate in Los Angeles, for instance, strictly on the basis of sulfate and particulate levels alone.

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